

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

TIMOTHY DAVIS,)
)
 PLAINTIFF,) CASE NO. 2:17-CV-823
)
 vs.)
)
 CITY OF COLUMBUS, et al.,)
)
 DEFENDANTS.)
)

TRANSCRIPT OF EXCERPT OF JURY TRIAL PROCEEDINGS

TESTIMONY OF LEVON MOREFIELD

TESTIMONY OF ROBERT REFFITT

BEFORE THE HONORABLE ALGENON L. MARBLEY
UNITED STATES DISTRICT JUDGE, and a jury
DECEMBER 17, 2021; 9:00 A.M.
COLUMBUS, OHIO

APPEARANCES:

FOR THE PLAINTIFF:

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Proceedings recorded by mechanical stenography,
transcript produced by computer.

1 FRIDAY MORNING SESSION

2 DECEMBER 17, 2021

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6 LEVON MOREFIELD

7 Called as a witness on behalf of the Defendant, being first
8 duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MS. NOBLE:

11 Q. Sergeant Morefield, can you tell me what you do for a
12 living?

13 A. Yes. I'm a Columbus police sergeant with the Columbus
14 Division of Police in Columbus, Ohio, here.

15 Q. I'm going to ask you to tell me a little bit about your
16 life, but I want to start off with your early life.

17 A. As far as like?

18 Q. When you were a kid.

19 A. Much like Officer Johnson, I'm also a native of
20 Columbus. I grew up in the Linden area. Really unique. I'm
21 going to try to make it as quick as possible because I could go
22 on. I could have us here till Christmas.

23 I grew up on the other side of law enforcement. I was
24 actually born to parents who were addicts of crack cocaine. I
25 was actually born addicted to crack cocaine, and I was the

1 youngest of three brothers. My parents to this day are still
2 crack addicts. My mom, unfortunately, still struggles with
3 addiction. She lives on the 2nd Precinct which is the Linden
4 area, the same precinct I grew up on.

5 Growing up, my parents were kind of in and out of the
6 picture. We went from home to home, foster care, a bunch of
7 different things. It wasn't really foster care. It was just
8 whoever could help us out at the time and could feed us.

9 As a result, as I got a little older -- little older
10 being nine years old -- at the age of nine, I started selling
11 crack cocaine myself. It was what my two older brothers and
12 what my cousins did. And my aunt who was taking care of me at
13 the time literally told me, hey, you got to figure it out. And
14 by figure it out, she went -- and I had to take on the family
15 business which was start peddling drugs. She said she wasn't
16 going to feed me. She couldn't afford to feed me. If I wanted
17 to eat, I pretty much had to start running drug for my brothers
18 and cousins.

19 At nine years old in the third grade, that was the first
20 time I was arrested for possession of crack cocaine. It wasn't
21 two years later I found myself with a second felony arrest as a
22 juvenile. I got caught with the firearm while driving to go
23 deliver more drugs.

24 With that, I know Judge Marbley said not to get into too
25 much narrative. I'm not sure if that's what you're looking

1 for. That's how my life started. That's the basics. I know
2 she asked about the childhood. I think just kind of want to
3 paint a picture of the childhood. But I can keep going on
4 unless she has another question for me.

5 THE COURT: Sergeant Morefield, that comment was not
6 directed to the witness. It was for the lawyer to break up
7 your answer so that the jury could be able to follow it. So
8 now you're talking about your childhood. She may ask you
9 questions about what you were doing as an adolescent, et
10 cetera. I don't want you to curtail your answers. Answer your
11 questions thoroughly.

12 THE WITNESS: My apologies.

13 THE COURT: No problem. Go ahead, Ms. Noble.

14 BY MS. NOBLE:

15 Q. You kind of stopped at age 11. What happened after that
16 until you were like probably 18?

17 A. So, actually, during the second arrest -- again, much
18 like Officer Johnson growing up in inner city Columbus, you're
19 kind of lied to. You're lied to by the media. You're lied by
20 your -- my role models at the time were family members who have
21 all been in and out of prison, all felons, people that I grew
22 up with in the neighborhood. And you're lied to by the
23 community that you can't trust the police and that the police
24 is almost the enemy. And especially like I'm considered a
25 black American. My father is black. My mother is white. But

1 in the black community growing up, it was never okay to trust
2 the police, at least in the Linden area that I grew up in, and
3 especially white police officers.

4 And the second officer that arrested me happened to be a
5 white police officer. And it was that interaction that started
6 to get me on the right track just because in the back of --
7 when I was in the back of his cruiser, some of the things that
8 he was saying to me -- and he was asking questions, and the way
9 he treated me. It changed my perception at 11 years old
10 because I kind of knew then what I've been told isn't the
11 truth. Here this officer is, he just caught me with a gun that
12 I could have used to harm him, and he's asking questions like
13 where is your mom at? Who takes care of you? How do you eat?
14 How do you get to school? Are you going to school?

15 He told me there's life outside of Linden. You got to
16 figure out a way to get out of this neighborhood. He actually
17 said, You're not actually a bad kid, you're just in a bad
18 environment, and started using phrases like you're going to
19 become a product of your environment.

20 That's truly what happened. And it happened with both
21 of my brothers who are now today both serving life in prison.

22 With that, he asked, What are you good at? I was just
23 like, you know, I'm good at football. He says, You can't play
24 football in jail.

25 So as soon as I got out -- I was released from juvenile.

1 It was -- it wasn't automatically. It wasn't straight and
2 narrow. I had to start surrounding myself with positive people
3 in order for positive things to happen. I knew the life I was
4 living I was going to end up dead or in prison, which happened
5 to my older cousins and both of my brothers. Luckily they
6 survived several incidents and they're not dead, but they are
7 serving life in prison.

8 With that, I had a lot of help from teachers and coaches
9 who knew I wanted to do well. I had to stay very disciplined.
10 It was tough. I started realizing that everything you do in
11 life is a -- is like everything in life has consequences.
12 Everything is based off of your actions, and for every action
13 there is a reaction.

14 As I started to make different decisions and start to
15 live a different way, I started to get a different outcome.
16 People who were willing to help me but weren't afraid to no
17 longer help me because of the lifestyle I was living, that help
18 became more available. I had different teachers help me out,
19 different friends, families, who knew this kid wants to change
20 but he's just in an unfortunate environment.

21 I ended up in high school. It was rough at first. My
22 first two years I didn't have a GPA at all because I was still
23 kind of running the streets; just thankfully never got caught
24 because it would have been my third felony arrest as a
25 juvenile. I knew I needed to get on the football field. I was

1 going to use football as a ticket to make it out of the hood.

2 Sounds cliché, but that's exactly what happened.

3 I ended up playing my junior year at Brookhaven High
4 School which is in the North Linden area. The first year I
5 played, we ended up winning the state championship. We were
6 the first city league school to ever do it in our state and any
7 of the surrounding states. And we're still the only city
8 league school to ever do it in our state and any other
9 surrounding states.

10 And then my senior year I only got to play in the first
11 game because I broke my foot. It was a season-ending injury.
12 So I only played my junior season and the one game my senior
13 season, but it was enough to get me to the University of Akron
14 where I ended up playing college football at. Prior to that, I
15 was the first one in my family to ever graduate high school,
16 let alone go to college and graduate with honors.

17 And just to kind of paint the picture, nobody goes to
18 college to play Division 1 college football without NFL dreams.
19 That was always a dream of mine, especially this is going to be
20 such an amazing story to come from where I came from to make it
21 to the NFL. I found out the first day of summer camp I'm not
22 going to NFL. These guys are really good. This is Akron.
23 This isn't Ohio State or Alabama.

24 With that, as time went on, I actually studied biology,
25 pre-medicine, double major business administration and a minor

1 in criminal justice. When I was a sophomore in college, again,
2 NFL dream was on the back burner. But I started trying to
3 figure out what I wanted to do. I was pre-medicine, but I knew
4 I didn't want to actually study or practice medicine. I just
5 did it because I thought it was a good thing to do. It was
6 kind of a waste to have a degree in something I'm not using.

7 With that, I had a professor in one of my criminal
8 justice classes -- it was principles of criminal law -- who was
9 an officer in Stowe, Ohio. And I just asked like would it be
10 possible to take a ride-along with you. And he was like,
11 absolutely, I'll bring you on a ride-along; and kind of just
12 explained my background to him. He was blown away. How does a
13 kid like you make it to where you're at?

14 I told him the interaction I had with that officer when
15 I was 11. It impacted me to this day. And with that, it would
16 be awesome if I would ever have the opportunity to go into law
17 enforcement. And he is the one who brought it to my attention
18 that, hey, those criminal acts are as a juvenile. You can get
19 your record expunged and there's nothing that's going to keep
20 you from becoming a law enforcement officer. And that set that
21 fire underneath me. I knew what I wanted to do was give other
22 youth the same opportunity that officer gave me.

23 And since -- I know this isn't what she asked, but since
24 being an officer, I found out that I don't only get an
25 opportunity to give youth that same treatment and opportunity

1 and help them out, but also adults. Because, unfortunately,
2 people don't know what they don't know. I'm a living example
3 of that. As a result, it was a passion of mine to pursue not
4 being a police officer anywhere but being a police officer here
5 in Columbus, Ohio, where I was born and raised because there's
6 other youth out there and other people out there who grew up
7 just like I did, who don't know they can make it out of the
8 environment and the situation they're in.

9 That's -- I rambled. I'm sorry.

10 Q. I understand. So you did the ride-along and that kind
11 of helped solidify that you wanted to be a police officer?

12 A. It did. It was a much different department, but the
13 ride-along was more of an eight-hour mentor session and just
14 kind of learned about him and he learned more about me. And he
15 is a gentleman that I still keep in touch with. But he
16 actually retired. And he's a full-time professor. But that
17 was just the start; Stowe, Ohio, a much smaller town. It was a
18 start.

19 Even as a kid growing up in the inner city, I was still
20 intrigued by the lights and sirens and things like that. The
21 ride-along was more of a mentor session. It was actually an
22 uneventful night, but that was the start of me chasing and
23 pursuing a career in law enforcement.

24 Q. What steps did you take -- actually, first, what
25 position did you play in football?

1 A. So I was what my coach called a utility infielder which
2 is not a real position. But I started off playing safety, but
3 I moved around a lot. I didn't have a dedicated position in
4 college. I was undersized to play Division 1 college football.
5 So I started off playing safety, played running back. And then
6 I ended my senior year, I was a fullback.

7 Q. What steps did you take after that ride-along that
8 helped you become a police officer with the Columbus Police
9 Department?

10 A. Following the ride-along, I still was in football. And
11 I ended up earning scholarships. So they were paying for my
12 school. So I had a commitment to football and the team. As
13 far as being an undersized player, I ended up winning a
14 national award, the Rudy award. I'm not sure if anybody has
15 seen the movie Rudy, but I actually got to meet the real Rudy.
16 And that award was given to the most inspirational Division 1
17 college football player that exemplifies courage, commitment.
18 It's going to sound bad, but I don't remember the other two
19 characteristics.

20 With that, won that national award, kind of professed my
21 passion for being in law enforcement and got a lot of offers
22 from law enforcement agencies all over the country. And I
23 respectfully turned them down and explained to them I just
24 don't want to be in any law enforcement. I want to be in law
25 enforcement with the Columbus Division of Police.

1 So I started reaching out to people that were local and
2 figuring out -- and I was introduced to the recruiting unit who
3 explained to me what steps I had to do to apply and what it
4 would take to get on. And just because of my background, we
5 actually sat down and went through all of the background
6 removal standards to make sure there was nothing in my
7 background that would be cause for removal from their process.
8 And I -- November of 2010, which was one year before I
9 graduated college, I ended up applying to the Columbus Division
10 of Police.

11 Q. And when did you start the academy at the Columbus
12 Police Department?

13 A. I did not start the academy until December of 2014.

14 Q. What did you do -- I know you said you applied a year
15 before you graduated. What did you do after you graduated from
16 college and before starting with the Columbus Police
17 Department?

18 A. I was under the assumption that being a police officer
19 was like any other profession or job. You apply and then a
20 month later you're working. And I was clearly wrong. It's a
21 really, really rigorous process.

22 After graduating, I took the MCAT which is the entrance
23 exam into medical school, scored pretty well on it. Once I
24 found out how long the process of being an officer was, I got a
25 couple of options. I can pursue medical school, which I chose

1 not to, or I could do something to get me by until I become an
2 officer. I thought, at max, it would take nine months to a
3 year. You see it took over four years. And I'll get to that
4 reason in just a minute.

5 I ended up getting into sales. I was a retail sales
6 consultant with AT&T. And I thought it was just going to be
7 like a -- just an entry-level job right out of college until I
8 became a police officer. I ended up not getting accepted. I
9 never got denied or rejected, but I didn't get accepted and it
10 was because of my background. And with that -- at that point,
11 I had to figure out a new -- AT&T is not going to be my career.
12 I want to pursue being a police officer, but it seems I'm going
13 to have to fight and jump through a bunch of hoops in order to
14 get admitted into their academy.

15 So I ended up leaving AT&T. I got into the mortgage
16 industry for a little while which is originating loans,
17 refinances. When people purchase homes, I was the lender, and
18 ended up doing really, really well for myself in a short amount
19 of time there. And just kind of got tired of sales, always
20 having quotas and things of that nature. All this time I'm
21 still fighting to get on the police department. And I ended up
22 leaving the mortgage industry in June of 2013 and went into the
23 business for myself.

24 I ended up -- I always liked to do things with my hands.
25 While in college, some of the side jobs I did was contracting

1 work. So any kind of remodeling, home construction, things
2 along those lines. That is what I did for summer jobs. And I
3 always like to see the fruit of my labor. So it was always
4 something fun, putting puzzles together, things like that. It
5 was like puzzles for adults is what I looked at contracting as.

6 I thought it would be neat to go into business for
7 myself. I ended up acquiring a bunch of rental properties in
8 the Old Brooklyn area, owned 51 units in Old Brooklyn, and
9 started my own property management company, my own contracting,
10 restoration company. I'm a preferred vendor with All State and
11 the entire northeast region of Ohio.

12 And I started giving up on becoming a Columbus police
13 officer because it seemed like I was just in limbo, couldn't
14 get a solid answer. I started planting my seed, per se. My
15 wife and I thought, hey, we'll just settle here. She was
16 working as a nurse at the Cleveland Clinic, had a great job
17 there.

18 It was November of 2013. So five months after I went
19 into business for myself and started doing really well, I got a
20 call from a background investigator with the Columbus Division
21 of Police who said that Mayor Coleman had instructed at the
22 time Safety Director Mitchell Brown to go back through my
23 packet and put me back in the process.

24 And he called and asked was I interested. And I was
25 like you bet your A-S-S I'm interested. This was what I want

1 to do for a living. While I won't make as much money, I won't
2 have as nice of a life, it's in my opinion what I was called to
3 do and it's going to be more gratifying even if I can reach one
4 life the way that officer reached me.

5 So I was back in the process and still had to fight a
6 little bit when I was in the process because I met a lot of
7 opposition, again, because of my background. Although it
8 wasn't grounds for removal, it's not common for a felon to
9 become a police officer. And thankfully it was as a juvenile,
10 not as an adult, because it would have permanently disqualified
11 me. I eventually made it through and started the academy
12 December 8th of 2014.

13 Q. And you heard Officer Johnson talk about how long the
14 academy is. It was six months, is that correct, for you as
15 well?

16 A. It's a -- it was a little longer for me. Out of all of
17 everybody that's over there, all the officers over there, I'm
18 the newest. I went through the academy the most recent. And
19 my academy was 32 weeks which is a little longer than six
20 months. They are continually adding and I guess just
21 constantly improving. But the training becomes more and more
22 rigorous. And even now today, it's even longer than that. But
23 it was a little longer than six months, to answer your
24 question.

25 Q. And what is your current assignment?

1 A. I am a relief sergeant on Zone 5C Company covering 11
2 and 12 Precincts.

3 Q. What does that mean?

4 A. So I am -- I am not actually in charge of a unit. So,
5 for instance -- a unit meaning a precinct. So in Zone 5 -- as
6 we mentioned before, the city is composed of five zones, 20
7 precincts. Zone 5 consists of 11 Precinct, 12 Precinct, 7
8 Precinct and 16 Precinct. Each precinct, each shift -- so
9 three different shifts, they have a sergeant.

10 So, for example, S12 would be Sergeant 12 but S12C is
11 the 12th Precinct sergeant on third shift. S12B is 2nd
12 Precinct sergeant on second shift. S12A would be the 12th
13 Precinct sergeant on first shift.

14 So A, B and C Companies are A for first, B for second, C
15 for third shifts. With that, B sergeants work five days a
16 week. They are assigned to five, eight-hour shifts. On their
17 days off, there's another sergeant who is considered a relief
18 sergeant who fills in on their days off. So, for instance, the
19 11 Precinct, third shift sergeant, his days off are Saturday
20 and Sunday. So when he's off Saturday and Sunday, I fill in as
21 S11 on Saturday and Sunday nights. The 12 Precinct sergeant,
22 his days off are Thursday, Friday. So I fill in Thursday and
23 Friday nights as S12.

24 I am unassigned on Monday meaning that I could be sent
25 anywhere in the city that needs coverage or anywhere on the

1 zone which -- because people take vacation. So even though
2 they have scheduled days off, they may be sick, they may be in
3 training. So other times I'll cover -- for instance, this week
4 the normal S11C, he is on vacation. So I've been working S11C
5 all this week. So I cover -- I'm mainly responsible for
6 covering those two precincts when their respective sergeants
7 are off.

8 Q. I know you indicated that your academy was a little
9 longer than what Officer Johnson described. Would you say that
10 his description of what is covered in the Columbus police
11 academy was similar to what you went through in the academy?

12 A. I'd say for sure. Of course, with our academy being a
13 little longer, some training was added. And the training that
14 was added in my academy and academies that follow my academy,
15 that's training that the entire division is caught up on during
16 in-service and things of those nature when we come back for
17 annual or semiannual training.

18 Q. Officer Johnson talked about the use of force or the
19 defensive tactics training. How often did you complete that
20 training?

21 A. So we complete the training annually. I happen to be a
22 defensive tactics instructor. I was a defensive tactics
23 officer, and now that I'm a sergeant, I'm a defensive tactics
24 sergeant. So I actually do the training quite frequently. I'm
25 there at least two to three days out of every month. But in

1 certain circumstances, like what's coming up, following the
2 week of Christmas I'll be out there for a two-week period to
3 help out and assist as needed with the current recruits in the
4 academy. And people who were on military leave, who were on
5 baby leave or injury leave, they need to get caught up in their
6 required training. And I will be out instructing people from
7 the division getting them caught up on their in-service
8 training. I complete the training more frequently. I have to
9 as an instructor. But we at least complete the training
10 annually.

11 Q. Since becoming a sworn officer with the Columbus Police
12 Department, have you had any -- aside from being a patrol
13 officer and a sergeant, have you had any special assignments or
14 temporary assignments?

15 A. I have. I wear a lot of hats for the division. You
16 want me to go through them?

17 Q. If you could briefly state which ones you were a part
18 of.

19 A. I'm part of our Honor Guard. I'm part of our peer
20 assistance team, defensive tactics instructor. I was a field
21 training officer. I actually promoted out of that. You can't
22 be a sergeant and field train recruits anymore. So I promoted
23 out of being an FTO, as we call them.

24 I'm part of Teams and Police Service which is TAPS.
25 It's a program where we go into high schools and middle schools

1 and create a working relationship with youth that have been
2 identified as troubled youth by their principals, by their
3 teachers, things of that nature. I am a part of our bicycle
4 unit, our bike rack and response team. Those are just some of
5 the things that I can think of.

6 I also was administratively transferred to robbery for a
7 period of eight months where I was lead detective on 25 cases
8 between commercial and individual robberies. And I actually
9 have done some temporary assignments with the gang unit. I've
10 done a temporary assignment with the Violent Criminal Working
11 Group. And then I've done temporary assignments where I was a
12 full-time defensive tactics instructor instructing the recruits
13 and doing our in-service training for the entire division,
14 which I've literally trained everyone on the entire division in
15 some form of defensive tactics whether it's handcuffing or
16 boxing or grappling. That includes the chiefs of police, the
17 deputy chiefs. That includes everyone on our entire division I
18 have trained as a defensive tactics instructor.

19 Q. You indicated the Violent Crime Working Group which is
20 the temporary assignment you were on on September 1st, 2017; is
21 that correct?

22 A. Yes, ma'am, that's correct.

23 Q. You heard Officer Johnson describe the Violent Crime
24 Working Group. Would you say that his description was an
25 accurate description of the Violent Crime Working Group?

1 A. Yes.

2 Q. Prior to September 1st, 2017, had you ever had any
3 interaction with Mr. Davis?

4 A. I had not.

5 Q. What did you know about Mr. Davis prior to your
6 interaction?

7 A. So prior to September 1st I knew that Mr. Davis had
8 warrants for assaulting a police officer in Columbus, Ohio, and
9 another warrant out of Kentucky for causing serious physical
10 harm to either a police officer or state trooper in Kentucky.

11 Q. Do you remember when you first heard about Mr. Davis?

12 A. I do.

13 Q. How far in advance to September 1st was it?

14 A. I can't recall exactly.

15 Q. Do you know if it was days, weeks, months?

16 A. I'd say at minimum a week to week and a half.

17 Q. How did you learn about Mr. Davis's warrants?

18 A. So just to paint the picture of how we learn about
19 warrants in general, we actually find out through word of mouth
20 a lot of times, and then we have a verification system to
21 verify. But I actually learned about Mr. Davis's warrants I
22 want to say two ways. The first way was through Officer Baker
23 who had shared his knowledge or some of his knowledge regarding
24 Mr. Davis's warrants.

25 And then the second was -- every day, Monday through

1 Friday, we have something on the Division of Police called a
2 daily bulletin that is sent out every single day. And that
3 daily bulletin has like, you know, if you got to get your
4 in-service training made up. Like today's daily bulletin
5 posted something about uniforms. It's like an update to
6 uniforms. We're going to be switching our hats from the
7 eight-point cap you see me wearing in here everyday to ball
8 caps. That's at the chief's discretion.

9 All the way at the bottom of each daily bulletin, it
10 always runs a list of wanted people. It has their name and
11 warrants and also has a list of cancellations. So if that
12 person was arrested, it will say like canceled and their name
13 and everything that is associated with it will be stricken, or
14 have a line actually going through the middle of it showing
15 it's canceled because they have been apprehended. And I want
16 to say that was the second way I saw Mr. Davis's name in the
17 daily bulletin as well.

18 Q. So on September 1st you ended up at Livingston Market in
19 the evening. Can you tell me once you drove up to Livingston
20 Market what you did?

21 A. Once we drove up to Livingston Market, I put the car in
22 park. And I'm pretty sure I took the keys out because it was a
23 plain car, not a cruiser. Usually we leave the cruiser running
24 because it's a police cruiser and, you know, the concern really
25 isn't with it being stolen. Since this was a plain car, I

1 think I took the keys out, or at least turned the car off --
2 put it in park and turned the car off. I exit the vehicle and
3 I draw my firearm and I start heading into the market.

4 Q. What were you wearing that day?

5 A. I was wearing a Columbus police -- a division-issued
6 tactical vest. I was wearing khaki pants. I had a drop leg
7 tactical holster. I had a red Coca-Cola, Dr. Pepper shirt on,
8 and tennis shoes.

9 Q. The tactical vest that you were talking about, was that
10 similar or the same one that we were showing during opening
11 statements?

12 A. The vest that I had on was the exact same vest with the
13 exact same setup that was shown here on opening statement.
14 That was the vest I wore that day in the same condition.

15 Q. Why did you have your firearm out?

16 A. So part of our policy when arresting felons is to -- we
17 have something called a felony stop. So, if we were to pull a
18 felon, a wanted felon, over in a vehicle, we arrest them at
19 gunpoint due to the potential for violence. So to have the gun
20 out, it's part policy. However, that day as we were
21 approaching the store, I observed Mr. Davis standing outside of
22 the store. And it appeared that Mr. Davis peered into our
23 vehicle a little bit. And, to me, it appeared that Mr. Davis
24 understood what was about to take place. It looked like
25 Mr. Davis saw us and knew that we were police with how fast I

1 pulled up in that vehicle and pretty much did a jump-out. How
2 fast I approached in that nature, I was under the impression
3 that Mr. Davis knew that we were the police.

4 And what I would describe is what Mr. Davis's actions is
5 he dipped back into the store which is a quick, furtive
6 movement to get back into the store. As a result of that, just
7 in my experience and training, it's usually when someone is
8 either getting ready to draw a weapon or toss a weapon or
9 draw -- or to draw to hide contraband. As a result of the
10 unknown and Mr. Davis's quick motions to get back into the
11 store, I drew my weapon in the event he was also drawing a
12 weapon or had a weapon.

13 THE COURT: Officer -- Sergeant, I want to clarify one
14 thing. You said it's a part of the department policy whenever
15 you're executing an arrest under a felony warrant you are to
16 draw your weapon. Is that what you just said?

17 THE WITNESS: No, sir, a felony stop. I apologize. A
18 felony stop, if we were to perform a felony stop, a felony
19 traffic stop. If I were in my cruiser and I run a person's
20 information through LEADS - that's the system where we verify
21 warrants and people's information - and it kicks back that this
22 person has a valid warrant, if I'm a single officer in a patrol
23 car, I am supposed to wait for one other officer. Our division
24 policy requires that two officers, no minimum than two, make an
25 arrest on a wanted felon.

1 With that, the way that we make a felony stop is at
2 gunpoint. We don't want to approach the felon. We want the
3 felon to come back to us in a felony traffic stop. And part of
4 that policy is to have that felon at gunpoint at all times and
5 you have a contact and a cover. And taking part of that
6 policy, Your Honor, since I wasn't the first one in the store,
7 I was going to be the cover officer, which means I was covering
8 Officer Johnson who was the first officer which is also the
9 contact officer, the first officer to make contact while I'm
10 holding Mr. Davis at gunpoint.

11 Does that clarify, sir?

12 THE COURT: No. Because what I don't understand is is
13 it limited to traffic stops?

14 THE WITNESS: No, sir. I was using the felony stop
15 policy.

16 THE COURT: That's where I'm unclear. If you're
17 executing an arrest warrant for someone who has a felony
18 warrant, then when you approach that person, you are to have
19 guns drawn. That was my original question. And then I thought
20 you said, well, it's just for traffic stops. And then I
21 thought you said, no, it's not limited to traffic stops.

22 THE WITNESS: It's not limited to traffic stops. It's
23 also not policy to always have a gun drawn. But when we are
24 approaching a felon, we are to have our gun drawn during a
25 traffic stop.

1 THE COURT: So it's just during a traffic stop when
2 you're approaching a felon to arrest pursuant to a felony
3 warrant that you are to draw your gun?

4 THE WITNESS: That is the policy statement, that we
5 shall; not should, but shall.

6 THE COURT: I understand. Please continue.

7 BY MS. NOBLE:

8 Q. You were talking about contact/cover. Officer Johnson
9 was the contact officer, meaning he was the person that was
10 approaching Mr. Davis, and you were the cover officer. What
11 does the cover officer do?

12 A. So my job as a cover officer is to make sure, with my
13 gun trained on Mr. Davis, that he does not reach for a weapon,
14 he does not draw a weapon, he does not do anything that is
15 going to cause serious physical harm to Officer Johnson, the
16 contact officer, or to anyone else.

17 Q. What did you observe when you were -- when Officer
18 Johnson and you were approaching Mr. Davis?

19 A. So when you go through the door, the -- I'm not sure if
20 this was explained, but this is the way I remember it. The
21 right door going in, which is the left door going out, it was
22 actually propped open from what I recall. It was propped open.
23 So when we entered the store, I was behind Officer Johnson.
24 And I observe Officer Johnson I want to say looking straight or
25 looking to the left. So as I'm coming in, I'm looking to the

1 right because that's the way we're trained. If one officer is
2 looking one way when you're entering a building, the other
3 officer is going to look the other way. There's no need for
4 us, if we're entering a building, for us to both be looking the
5 same way and then a potential danger is behind us.

6 So, as a result, I observed Officer Johnson looking
7 straight or to the left. So as I was going in, I was trying to
8 look to the right to see if Mr. Davis potentially went that
9 way. As I didn't see him, I heard Officer Johnson announce
10 Columbus police, Timothy Davis, you're under arrest for your
11 warrants, man, something along those lines.

12 Q. Did you hear Mr. Davis respond?

13 A. I did.

14 Q. What did Mr. Davis respond?

15 A. He said, as he's looking back at Officer Johnson, no,
16 I'm not.

17 Q. You said as he was looking back. Was he facing Officer
18 Johnson or looking away?

19 A. Not looking -- he was facing away from Officer Johnson
20 with his left body towards -- or the left side of his body
21 towards Officer Johnson. From what I recall, he was walking
22 towards the exit of the store. He's looking at Officer Johnson
23 like as he's walking away saying, no, I'm not.

24 Q. Had you and Officer Johnson left that initial threshold
25 of the doorway?

1 A. No, ma'am, we had not.

2 Q. What happened after Mr. Davis stated, no, I'm not?

3 A. Officer Johnson was approaching him, and Officer Johnson
4 went to grab ahold of him in attempt to put him in the
5 handcuffs, literally textbook the way we're trained to approach
6 subjects as we're going to take control of them and put them
7 into handcuffs.

8 Q. I'm going to backtrack just a little bit. Before, when
9 Mr. Davis said, no, I'm not, what did you think that meant?

10 A. I thought it meant, no, I'm not under arrest.

11 Q. At that point did you believe he understood that you
12 were Columbus police?

13 A. I think he absolutely knew that. I think Mr. Davis,
14 without a doubt in my mind, knew that we were Columbus police
15 officers.

16 Q. You indicated that Officer Johnson grabbed Mr. Davis to
17 put him in handcuffs. Can you describe in more detail, if you
18 saw it, what Officer Johnson did?

19 A. So what I saw Officer Johnson attempt to do was
20 something that we call a double C-Clamp. And what that is --
21 I'm going to make the motion with my hands. My right hand, if
22 I'm approaching the subject on the left side of the body, is
23 going to be a little higher, and my left hand is going to be a
24 little lower. With my right hand, I have them in Cs like
25 C-Clamps, it is going to be placed right above the subject's

1 elbow, and my left hand is going to be placed on the subject's
2 wrist. We call that opposing C-Clamps.

3 The reason we train to grab people that way is because
4 if we can get ahold of them, we have a better chance of
5 controlling their body, controlling their arms; and actually
6 taking the hand that's on the wrist, which in this event would
7 be my left hand, keeping their arm with my right hand posted
8 here, that way they can't move it, and then forcing that hand
9 behind their body, or just placing that hand behind their body
10 if they allow us, into the handcuffing position.

11 Q. After Officer Johnson attempted to get Mr. Davis's hands
12 behind his back, what did you observe?

13 A. As soon as Officer Johnson touched Mr. Davis, I saw a
14 violent reaction from Mr. Davis. And prior to getting into
15 that, the thing I know from training in the academy is that
16 67 percent of all resistance happens upon first touch. They
17 literally drill that into our heads.

18 Even backing up a little further, we are also trained
19 that the first sign that someone will use violence against you
20 is when they do not comply with your commands. The initial
21 noncompliance was, no, I am not. That's what I observed. It
22 was an indicator that Mr. Davis is probably going to do what I
23 knew him to do in the past based off -- or allegedly what I
24 knew him to allegedly do in the past based off the warrants is
25 probably resist and flee. That's where my mind started going.

1 As he was making this violent motion towards Officer
2 Johnson, once Officer Johnson tried to grab him, I saw that
3 Timothy Davis did not have a weapon in his hands. It looked
4 like he had a cell phone in his hands. I immediately
5 re-holstered my weapon. And as I was re-holstering my weapon,
6 the commotion is going on. I started approaching as well to
7 try to assist Officer Johnson in taking control of Mr. Davis.

8 Q. Did you observe what Mr. Davis did to Officer Johnson at
9 that time?

10 A. So what I observed is when he tried to grab Mr. Davis,
11 the violent motion I remember is him turning into Officer
12 Johnson and then moving Officer Johnson. Whether he was
13 pushing him, trying to tackle him, I don't know, but he was
14 moving Officer Johnson.

15 Q. How did you respond to Mr. Davis's violent resistance in
16 moving Officer Johnson?

17 A. So with how violent that initial motion was and how
18 quick everything was heading, and I knew again with the
19 experience -- or not the experience but the prior knowledge of
20 Mr. Davis allegedly fleeing in the past and also resisting in
21 the past, that caused me to immediately go to a level four and
22 I struck Mr. Davis in the face, struck him in the face again,
23 and then struck Mr. Davis in his I want to say left lower rib
24 area.

25 Q. You indicated that you struck him in the face?

1 A. Yes.

2 Q. Which side of the face, do you recall?

3 A. So I struck Mr. Davis in the left side of his face in
4 the lower jaw, cheek area with my right fist twice.

5 Q. And then the lower rib area, was that also with your
6 right hand?

7 A. I want to say -- and I may be out of order when I
8 actually struck him, but in the lower rib area. That may be
9 out of order, but, yes, it was with my right hand as well.

10 Q. After you struck him in the face, do you recall what
11 happened next?

12 A. Yes. So the entire purpose for striking him in the face
13 is a distraction, to try to discombobulate him temporarily so
14 we can take control of him. I struck him in the face the first
15 time, and it was -- there was no effect. He was looking right
16 at me as I did it. He didn't stop. He didn't stop. It was
17 like I struck him, he looked at me. He did not stop wrestling,
18 as I would call it, with Officer Johnson. So I struck him
19 again, which I would call both times being ineffective because
20 he looked at me again.

21 After I struck him again, I think in an attempt to being
22 struck a third time, Mr. Davis started bending over and not
23 necessarily in a tackle position, but was bending over coming
24 forward with his arms forward as he's trying to push through as
25 if you're trying to push through a crowd. And the area he was

1 trying to push through or to get to appeared to be the exit.
2 In it attempt to stop him from doing that, I grabbed Mr. Davis.
3 And at this point his head is right in my belly, because I was
4 trying to grab him just to be able to gain control of him.

5 As he went down and his head in my belly, I just
6 transitioned to a knee strike. As his head is in my belly, I
7 grabbed the back of his head, kind of the base of his neck, and
8 I transition -- I deliver a knee strike to his sternum area
9 again in an attempt to distract, to knock the wind out of him
10 in an attempt to gain control of Mr. Davis.

11 Q. Do you know if any of the other officers besides Officer
12 Johnson was in the market by the time you did your two closed
13 fist strikes to his face?

14 A. I would assume that they came in as quick and with as
15 much urgency as I did. However, at this point in time, this
16 like -- the struggle had already started, and it started just
17 happening very fast, very fluid. So I do not recall seeing
18 anyone except Officer Johnson and then Mr. Davis. And I felt
19 like I heard feet shuffling behind me, which I would assume
20 would be Officer Connair, Officer Everhart.

21 Q. When you did the knee strike to his sternum, to
22 Mr. Davis's sternum, do you know if any of the other officers
23 were present yet?

24 A. Again, Officer Johnson and -- Officer Johnson was the
25 only officer that I could visually see. I was not able to see

1 Officer Connair, or do not recall seeing Officer Connair or
2 Officer Everhart yet. It was really quick. There was not much
3 time between -- this all happened in the snap of a finger it
4 seemed like, as far as these strikes, how quick it started and
5 where we were at at this point. And I did not recall by the
6 third strike being the knee strike, I did not recall seeing
7 Officer Everhart or Officer Connair at this point.

8 Q. After the knee strike to his sternum, to Mr. Davis's
9 sternum, what happened after that?

10 A. So, after the knee strike to Mr. Davis's sternum, I
11 recall the -- I'll just, for lack of a better term, the
12 commotion, the struggle, the entanglement going away from the
13 door, as that was our goal to keep Mr. Davis from leaving the
14 store. The ultimate goal was get him in handcuffs. It was
15 going away from the door. At that point I saw Mr. Davis trying
16 to get away from Officer Johnson, and that's when I delivered
17 the punch to Mr. Davis's lower left rib area with my right
18 hand.

19 Q. Do you know if any of the uses of force that we've
20 discussed so far, the two closed fist strikes to the face, the
21 knee strike to the sternum, and the closed strike to the ribs,
22 are they on any of the videos we've seen?

23 A. They are not on the videos we've seen.

24 Q. What happened after you struck Mr. Davis in the ribs?

25 A. Mr. Davis eventually went to the ground. He was pulled

1 to the ground I want to say by Officer Johnson possibly. Once
2 Mr. Davis was on the ground, he was on his back, and he had
3 what I call posted up, "post" meaning using one of his limbs to
4 post his body almost like a beam.

5 As he posted -- he was posting with his left hand in an
6 attempt -- it appeared he was getting back up. As soon as he
7 hit the ground, he was getting back up really quick, which our
8 goal is keep them on the ground, keep any person we are
9 wrestling or struggling with on the ground. As he was trying
10 to get back up, I delivered a kick to his brachial plexus
11 tie-in which is the area directly under the armpit, a bundle of
12 nerves. I know that area was mischaracterized by the
13 plaintiff's opinion witness. He was actually describing
14 something called the suprascapular and the clavicle. I'm not a
15 doctor. However, in our training, we are trained with
16 anatomical pictures of where these bundle of nerves are, where
17 to strike, how to strike, things along those nature.

18 And the security chief described the brachial plexus
19 tie-in wrong to the jury and the courtroom. The brachial
20 plexus tie-in is underneath the armpit. I delivered the kick
21 with my right foot, and it actually landed. And in delivering
22 that kick, my shin, not my foot, went across Mr. Davis's face
23 because, as he's trying to get up, I delivered the kick with my
24 foot successfully striking the brachial plexus tie-in, and my
25 shin inadvertently went across Mr. Davis's forehead area. And

1 that was what Mr. Sidoti earlier referred to as a kick to
2 Mr. Davis's face, which was not a kick to his head or face at
3 all. It was a kick to his brachial plexus tie-in.

4 Q. And was that kick to the brachial plexus tie-in
5 effective?

6 A. It was ineffective in the sense that we were not able to
7 get him arrested, and it was ineffective in that Mr. Davis
8 eventually made it back to his feet. I'm not sure how I
9 documented it on my use-of-force report, but I would say it was
10 ineffective overall.

11 Q. What happened after you kicked him in the brachial
12 plexus tie-in?

13 A. At this point Mr. Davis got -- he ended up getting back
14 to his feet. Officer Connair and Officer Everhart are for sure
15 in the store at this time. And I believe shortly after they're
16 in the store, again, we're pushing him back in the store. That
17 way he cannot escape or flee. At this point in time I started
18 considering other options because I had now stricken Mr. Davis
19 five times, all ineffective. So I started considering what
20 other options did I have. And I took a step back to think,
21 okay, this is going to be an actual struggle. The things that
22 I heard about Mr. Davis from Officer Baker, unfortunately, are
23 appearing to be true.

24 And I just started trying to assess and figure out what
25 can we do. How are we going to get this man under handcuffs

1 with nobody getting seriously hurt? I believe at that point in
2 time the initial video from Mr. Woodson-Levey, the short video,
3 I think that's where I started to pick that up because I
4 remember being in the back and just kind of having my hands on
5 one of the other officers just trying to assist and push to
6 keep Mr. Davis inside of the store.

7 Q. Did you observe when Officer Connair -- strike that.

8 What type of movements did you observe Mr. Davis do
9 while you were assisting another officer?

10 A. So it appeared that -- just the reference back to
11 football. It appeared Mr. Davis was trying to break tackles.
12 It appeared Mr. Davis was trying to exit the store, wrestling,
13 things of that nature. Now he wasn't wrestling like WWF which
14 you see on Monday nights. But as far as wrestling, he was not
15 complying with us officers as far as us getting him into
16 handcuffs, just making violent motions, pushing, doing whatever
17 he could, trying to get out of the grasp of all the officers in
18 the store.

19 At the same time, same things like I didn't do anything,
20 Officer, which we saw on video. I didn't do anything. Why?
21 In my head at the time it was registering that this is -- this
22 is actually coming to -- this is actually what I heard, that
23 the resistance, the fleeing, the something along the lines of
24 being a sovereign citizen and not having to follow law, it was
25 just like --

1 MR. SIDOTI: Objection.

2 THE COURT: Basis?

3 MR. SIDOTI: Your Honor, it's facts not in evidence
4 regarding what Mr. Morefield just identified about sovereign
5 citizen and the like.

6 THE COURT: Sidebar.

7 - - -

8 (The following proceeding was held at sidebar.)

9 THE COURT: Ms. Noble, I didn't understand the answer.
10 That's why I was -- stayed back. I was trying to -- I'm going
11 to reemphasize my request that, you know, both Morefield and
12 Johnson have interesting narratives that I'm going allow you to
13 get before this jury. It's part of your background. But I
14 don't want it in narrative form.

15 Now, Officer Morefield misunderstood what I said at the
16 end of our session yesterday and thought it impacted on the
17 testimony that he was giving. It's incumbent upon you as trial
18 lawyers to break this up. So please try to honor my ruling,
19 and let's dispense with the narratives because it really does
20 lose you. It's like your parents reading to you at bedtime.
21 They do that to put you to sleep in addition to give you
22 information.

23 MR. SIDOTI: Your Honor --

24 THE COURT: Go ahead.

25 MR. SIDOTI: Judge, I feel like I'm getting to the

1 point where I'm policing a free-for-all in these narratives,
2 number one. Number two, that response, I'm going to ask for an
3 instruction. His testimony what he just responded to the
4 question was, what I heard from Officer Baker was true, he
5 doesn't follow the law. And maybe as you dealt with them in
6 some of the criminal matters, people who claim to be a
7 sovereign citizen, there's some sort of UCC protection. I'm
8 not going to go into it --

9 THE COURT: Those are like the posse comitatus. Is
10 there any evidence that Mr. Davis is a member of the posse
11 comitatus? I've had a number of those cases before me. If
12 Mr. Davis is in the posse comitatus or otherwise a tax
13 protester, he would be the first African American with a
14 criminal record whom I ever had in my court who is a part of
15 that group. But he may be. Do you have any evidence that he
16 is?

17 MS. NOBLE: First, I had no idea that Sergeant
18 Morefield was going to go there. I had never heard that
19 comment.

20 THE COURT: I'm striking that. I will strike it as
21 unresponsive because it wasn't in response to your question.
22 But what I want to do with you and your -- with your input,
23 Ms. Noble, your input, Mr. Sidoti, is go back and look at the
24 answer. And I think it's the last two sentences where he
25 becomes unresponsive.

1 Ms. Evans, read back his answer.

2 (Thereupon, the last answer was read by the court
3 reporter.)

4 THE COURT: I'm going to begin with "in my head."
5 From there on, I'm going to instruct the jury to disregard as
6 unresponsive.

7 MS. NOBLE: To answer your other question about
8 whether or not there's any evidence of Mr. Davis being a
9 sovereign citizen, yes, I have it. I did not bring it up. I
10 did not think it was related, but I did want to answer your
11 question.

12 THE COURT: Certainly it's not responsive to your
13 question.

14 MS. NOBLE: I agree.

15 THE COURT: Thank you.

16 MS. GELSONIMO: What's that evidence? As long as it
17 doesn't come in.

18 MS. NOBLE: I have no intention of bringing it in.

19 MS. ROSENBERG: But it was in your discovery.

20 MS. NOBLE: It was in your discovery.

21 THE COURT: You all can talk about that later.

22 (The following proceeding was held in open court.)

23 THE COURT: Ladies and gentlemen, you are instructed
24 to disregard the following portion of Sergeant Morefield's
25 testimony as it was unresponsive to the question.

1 I'm trying to get to it.

2 "At the same time, same things like I didn't do
3 anything, Officer, which we saw on video. I didn't do
4 anything. Why? In my head at the time it was registering that
5 this is -- this is actually coming to -- this is actually what
6 I heard, that the resistance, the fleeing, the something along
7 the lines of being a sovereign citizen and not having to follow
8 law, it was just like --"

9 All of that is to be disregarded as unresponsive to
10 Ms. Noble's question.

11 Please continue, Ms. Noble.

12 MS. NOBLE: Thank you, Your Honor.

13 BY MS. NOBLE:

14 Q. Sergeant Morefield, around the time of that first video
15 from Mr. Woodson-Levey by the refrigerated section and the -- I
16 want to say like the chips and the pop section?

17 A. Yes, ma'am.

18 Q. In that aisle, did you hear Mr. Davis say anything?

19 A. Yes. What I thought I heard Mr. Davis say multiple
20 times and throughout is: I didn't do anything. I didn't do
21 nothing. What did I do?

22 I had multiple conversations with Mr. Davis during the
23 struggle, and Mr. Davis repeated the same thing: I didn't do
24 anything, Officer, I didn't do anything, sir, things along
25 those lines.

1 Q. And did you believe that he was resisting at this time?

2 A. I absolutely believe, again, without a doubt in my mind
3 that Mr. Davis was resisting at this time.

4 Q. Shortly after -- actually, strike that.

5 How long after the video, that very short clip from
6 Mr. Woodson-Levey where you can see Officer Connair fall into
7 the soda, how long after that did you move to like the register
8 part area?

9 A. Are you referring to the second video?

10 Q. Yes.

11 A. So following Officer Connair being pushed or tackled
12 into the can of soda by Mr. Davis to the second video, it's
13 hard to say how much time had elapsed, but I would say not more
14 than a minute.

15 Q. And did you give any commands during this time to
16 Mr. Davis?

17 A. I gave Mr. Davis commands from the beginning throughout
18 the entire -- throughout the entire interaction until we had
19 handcuffs on him. My voice is the one that could be heard
20 throughout having the conversation with Mr. Davis when he's
21 asking what did he do.

22 I said, because you're not complying. Stop resisting.

23 But I didn't do anything.

24 Yes, you are. You're not complying. Resisting stop.

25 That is my voice you hear. I gave Mr. Davis commands

1 throughout the entirety of this incident.

2 Q. What was Mr. Davis's response to your commands?

3 A. Multiple times: But I didn't do anything, Officer. I
4 didn't do anything, sir. What did I do? I'm not doing
5 anything.

6 It was just repetitive, the same things over and over.

7 Q. What actions was he doing in response to your commands?

8 A. Not complying with our commands, trying to get out of
9 the grasp of all officers, trying to get out of the grasp of
10 being arrested and not allowing us to put his hands behind his
11 back.

12 Q. We see in that longer video, the roughly four-and-a-half
13 minute video, you move a chip stand. Why did you move the chip
14 stand?

15 A. In the video you can see I actually -- my attention --
16 my attention is taken away from the struggle with Mr. Davis.
17 And the reason being I was sitting there, I kind of had my
18 hands on Officer Johnson's back as Officer Johnson is trying to
19 put Mr. Davis into handcuffs. My attention was taken away
20 because I started hearing feet shuffling. And I'm looking who
21 is coming through the threshold.

22 As I said in the beginning, the door to the market was
23 propped open and there were people standing in the door, some
24 of them almost standing like a track stance. Again, my
25 attention was taken away because, as soon as I saw that, it

1 provides a huge safety issue to not only to Mr. Davis but to
2 officers and everyone in the store as I don't know who these
3 people are. They're not officers. I don't know if they're
4 with Mr. Davis. I don't know if they want to cause harm to us.
5 I don't know what they are.

6 With us having so much attention on Mr. Davis, you see
7 me step off of camera for a minute and actually tell them move,
8 get away from this doorway. And I actually move the prop that
9 kept the door open.

10 As this is going on, I'm also hearing things going on
11 inside the store, which in the video it appeared to be
12 Mr. Woodson-Levey arguing with one of the store owners. I'm
13 hearing that commotion which took my attention away because
14 I -- again, things started -- I started realizing this isn't
15 going to be quick, it doesn't appear to be. And I started
16 looking around like who else is in the store? Is somebody
17 going to cause harm to us?

18 I hear the commotion. I see this guy standing over
19 there. And as he's standing over there, just like, okay, it
20 just made sense for me to set a barrier. That way he cannot
21 come through it. He cannot try to assist Mr. Davis. He cannot
22 try to harm us or harm Mr. Davis, and also for his safety as it
23 was unknown what was going to take place at this point in time.

24 I had never been in a struggle like this. I never been
25 in one since. So at the point in time I thought it was best to

1 create as much space as possible and keep any patrons,
2 civilians, employees, or whoever back far enough from us
3 because there was no telling what was going to happen. There
4 was no telling what was going to be produced, if anything at
5 all; so, as a result, just to keep people back away from the
6 struggle for their safety, for our safety, for Mr. Davis's
7 safety.

8 Q. After you moved the chip rack, what's the next use of
9 force that you use on Mr. Davis?

10 A. I would call it a level one use of force which is our
11 lowest level of actual force. That is when I grab Mr. Davis by
12 his dreadlocks and assist Officer Johnson in placing Mr. Davis
13 back on the ground.

14 Q. Just so we have the time frame, is that when Officer
15 Johnson does the double leg takedown?

16 A. Yes, yes, when Officer Johnson does the double leg
17 takedown of Mr. Davis.

18 Q. And what is -- what did you do after Mr. Davis was back
19 on the ground? This is the portion -- this is on that longer
20 video when he's back on the ground. Are you in that video at
21 that point?

22 A. I think I'm in the video at the beginning, and you can
23 see me grabbing Mr. Davis by his dreadlocks and assisting
24 Officer Johnson as he's performing a double leg takedown. Once
25 Mr. Davis is on the ground, I notice myself and other officers

1 doing exactly as we were trained which is heading to the
2 different stations of Mr. Davis's body.

3 Q. So once he is on the ground, what part of Mr. Davis's
4 body do you take control of?

5 A. I take control of Mr. Davis's head.

6 Q. Were you able to control his head?

7 A. For the most part. I was unsuccessful at times, as I
8 was posting my entire 220-pound body to Mr. Davis's dreadlocks
9 in an attempt to keep his head flat on the ground. And
10 Mr. Davis was still able to get back to the position that has
11 been referred to many times where he's on his knees, has his
12 knees underneath him and his hands underneath his body.

13 Q. What were you doing while now Sergeant Bennett was
14 cycling the taser?

15 A. There was a lot of time that elapsed from what I just
16 stated to when Sergeant Bennett was cycling the taser. I was
17 doing the same thing the entire time, giving Mr. Davis commands
18 as he was trying to get up. You can clearly hear in the video
19 don't get up, if you roll over, I'm going to knee you in the
20 face, things along those lines, in an attempt to keep Mr. Davis
21 where he was at.

22 I said successful at times because, overall, I was able
23 to keep Mr. Davis's head there. He did not completely get up
24 as I was literally posting my entire weight trying to hold on
25 for my life, per se, to keep Mr. Davis on the ground so he

1 could not get back on his feet. That went on for minutes as
2 I'm giving commands throughout the entirety, as heard in the
3 video.

4 Once Sergeant Bennett comes in and tases him, I'm doing
5 the same thing, controlling his head, trying to keep him down,
6 as I see the other officers doing exactly as we were trained
7 with what we would call a maximum resister.

8 Q. Why would you call Mr. Davis a maximum resister?

9 A. Because Mr. Davis did whatever he could to resist
10 arrest. Mr. Davis at no point in time complied. We finally
11 got handcuffs on Mr. Davis because Mr. Davis was completely
12 exhausted at the time. That's why I would call Mr. Davis a
13 maximum resister.

14 Q. What did you do once Mr. Davis was finally in handcuffs?

15 A. Once Mr. Davis was finally in handcuffs, I took a deep
16 breath, kind of a sigh of relief. As you can see in I believe
17 it's Officer Lemak's video, I was huffing and puffing, was
18 taking deep breaths, sighs, just glad the encounter had ended.

19 Q. You've heard the testimony of other witnesses in this
20 case; is that correct?

21 A. Yes, ma'am.

22 Q. Do you remember Mr. Woodson-Levey alleging that he heard
23 someone use the N word?

24 A. Yes, ma'am, I do.

25 Q. Did you or anyone on your team use that word?

1 A. Absolutely not.

2 Q. What would you have done if you heard one of your team
3 use that word?

4 A. I would have done what I have done in the past, and that
5 is to report any officer who uses that word. I would have
6 reported them, as I have in the past, complained on them, and
7 it would end up being in a lawsuit as it is right now.

8 Q. Is that the lawsuit with Lieutenant McFadden?

9 A. Yes, because Lieutenant McFadden actually called me that
10 word and I complained on her for it.

11 MR. SIDOTI: Objection. Hearsay. But it's been
12 answered. So I'll withdraw it.

13 THE COURT: All right. Please continue, Ms. Noble.

14 MS. NOBLE: Thank you, Your Honor.

15 BY MS. NOBLE:

16 Q. You were also able to sit through Dr. Taylor's
17 testimony; is that correct?

18 A. Yes.

19 Q. Did you hear him reference a pig pile during his
20 testimony?

21 A. I did.

22 Q. How did that make you feel?

23 A. Pretty disgusted. It's a derogatory term. It's a term
24 that has never shed positive light on police officers.

25 Although being a police officer isn't a race or a gender or

1 anything of that nature, but it would be equivalent of calling
2 a race a derogatory term or gender a derogatory term. That's
3 the derogatory term for police officers.

4 Q. You heard testimony or allegations that the officers
5 were exacting revenge due to the Officer McKeon incident. Can
6 you speak to that?

7 A. I can speak to that. That's not true. That's not the
8 culture of our division, and it's not something that we take
9 into consideration for emotional purposes. I can't speak for
10 every officer, but I can speak for the majority of officers in
11 saying -- I can't put words in their mouth, but the culture
12 that I know and what I see to be true is we -- like the way we
13 are -- just an example, I didn't know Officer McKeon. I have
14 no -- I care that that happened to Officer McKeon. I'm glad he
15 is alive and wasn't seriously injured.

16 MR. SIDOTI: Objection.

17 THE COURT: Sustained.

18 BY MS. NOBLE:

19 Q. Why did you use the forces you used against Mr. Davis?

20 A. Because Mr. Davis did not comply with the command, and
21 Mr. Davis was resisting arrest and he didn't comply with our
22 commands. He tried to avoid us placing handcuffs on him.

23 Q. You were also able to sit through Mr. Davis's testimony;
24 is that correct?

25 A. Yes.

1 Q. Did you hear him speak that he thought he was being
2 robbed?

3 A. I did.

4 Q. In your experience in the robbery unit, how do robberies
5 against an individual usually happen?

6 MR. SIDOTI: Objection.

7 THE COURT: Sustained.

8 BY MS. NOBLE:

9 Q. Can you -- are you familiar with the Livingston Market?

10 A. I am.

11 Q. Are you familiar with that area?

12 A. I am.

13 MS. NOBLE: May I have a moment to confer with
14 counsel, Your Honor?

15 THE COURT: Yes, you may.

16 MS. NOBLE: Thank you. No further questions at this
17 time. Thank you.

18 THE COURT: Thank you, Ms. Noble. Ladies and
19 gentlemen, it's 10:50. Since we got started a little later, we
20 just continued through. We'll stand in recess until 11:05.

21 (Recess taken from 10:50 a.m. to 11:14 a.m.)

22 (Jury in at 11:14 a.m.)

23 THE COURT: Mr. Sidoti, are you ready to proceed with
24 cross?

25 MS. SALLEY: I am, Your Honor.

1 THE COURT: Please proceed.

2 MR. SIDOTI: Thank you, sir.

3 - - -

4 RECROSS-EXAMINATION

5 BY MR. SIDOTI:

6 Q. Sergeant, hello again.

7 A. Good morning.

8 Q. During your direct examination, I just kept track in
9 regards to some of the testimony you gave regarding Mr. Davis's
10 conduct. And during your direct testimony, you used the word
11 violent 12 times as you were answering questions from your
12 attorney. Do you recall that?

13 A. I do.

14 Q. What's your definition of the word violent?

15 A. Aggressive.

16 Q. Well, if somebody uses the word violence, what does that
17 mean to you?

18 A. They're aggressive.

19 Q. Do you think they're synonymous?

20 A. To an extent.

21 Q. Violence, would it surprise you, is defined like death,
22 serious physical harm or death? It's violent, right?

23 MS. NOBLE: Objection.

24 THE COURT: Basis?

25 MS. NOBLE: Hearsay.

1 THE COURT: I'm going to sustain it based on form of
2 the question and lack of background for where that definition
3 that Sidoti used came from. So your objection is sustained.

4 BY MR. SIDOTI:

5 Q. Sergeant, will you look to your right? I'm going to ask
6 you to review a document I want to ask you some questions
7 about. It's been previously identified as Plaintiff's Exhibit
8 144 for the record. I just want you to read it to yourself
9 after you've identified the document, please.

10 A. The narrative or --

11 Q. Yes, sir. The narrative -- first page doesn't contain
12 the narrative, but pages 2 through 4 if you would read through
13 those, please.

14 A. I'm finished, Mr. Sidoti.

15 Q. Thank you, sir. Can you point out to me one place in
16 that entire use-of-force report that you ever identify that
17 Mr. Davis used the phrase officer to identify the fact, as
18 you've testified, that he knew that he was being assaulted by
19 police officers?

20 A. Can you repeat that question?

21 Q. Can you identify in that use-of-force report anywhere
22 where you told your superior officers that Mr. Davis ever used
23 the word officer to identify, as you've testified, that he knew
24 he was being assaulted by police officers?

25 A. Sir, this document is --

1 Q. Sir, please answer my question.

2 A. I am answering your question. This document is just to
3 document my uses of force.

4 Q. My question is, in a use-of-force report that you just
5 reviewed, do you recall in there that you wrote down quotes
6 allegedly stated by Mr. Davis, things that he said?

7 A. I do.

8 Q. Do any of those quotes contain the fact that he used the
9 word officer to identify for this jury that he would have known
10 he was being assaulted by police officers?

11 A. Again, that's not what goes in this document.

12 THE COURT: Sergeant Morefield, as I instructed other
13 witnesses, you have to answer the question asked. And you will
14 have an opportunity to explain it. So I want you to feel
15 confident that you can explain your answer, but you have to
16 answer the question asked.

17 THE WITNESS: No. To answer your question, no.

18 BY MR. SIDOTI:

19 Q. Do you identify anywhere in that document -- strike
20 that.

21 You've told the ladies and gentlemen of the jury that
22 you, according to your use-of-force report that you just
23 reviewed, wrote in there in some portion some specific things
24 you're claiming Mr. Davis said to you while he was being
25 assaulted, correct?

1 A. That's a long question. Can you repeat it?

2 Q. Yes. Inside of that report you just reviewed, do you
3 identify allegations of things you said Mr. Davis quoted during
4 the time he was being assaulted by law enforcement in this
5 incident?

6 A. I don't recall. I can read it again if you'd like.

7 Q. Let's just go to the last page, for example. Excuse me.
8 Page 2, the very last sentence. Officer Morefield heard
9 Mr. Davis say, quote, no, I didn't do anything, end quote,
10 correct?

11 A. On page four of six.

12 Q. The bottom stamp should say 43.

13 A. Mine says 45.

14 Q. Page 2, if it says 43 on the bottom left?

15 A. Yes.

16 Q. Do you see that quote?

17 A. I do.

18 Q. It's in quotes, correct?

19 A. It is.

20 Q. Just so we can clarify, in your use-of-force report, you
21 identified some things that you're alleging Mr. Davis said in
22 quotations, comments made by him, correct?

23 A. Yes, which caused me to use force.

24 Q. Great. You can add that if you want to. But my
25 question is there were quotes that you specifically made that

1 you're claiming Mr. Davis made during this interaction, yes?

2 A. And I said, yes, which caused me to use force.

3 Q. "Officer" is never in there, is it, that you claim was
4 stated by Mr. Davis?

5 A. Mr. Davis stating "officer" did not require me to use
6 force.

7 Q. Or "sir," correct?

8 A. Same.

9 Q. I mean, a dispute, you'd agree, from two weeks of
10 testimony now is the fact that Mr. Davis was disoriented,
11 didn't know who was there, claimed he got robbed. So at issue
12 is if you announced yourself and he knew you were police.

13 Would you agree with that?

14 A. Please repeat that one more time.

15 Q. Would you agree that a fact at issue is if Mr. Davis
16 knew that you were police officers before he got struck 51
17 times?

18 A. I would agree.

19 Q. So that's at issue in this case, correct?

20 A. I'd say it was brought up in this case, yes.

21 Q. Well, this is your second time testifying, correct?

22 A. That's accurate.

23 Q. And on direct for the first time of all your testimony,
24 you made allegations that Mr. Davis acquiesced the fact that
25 law enforcement was there by saying, Officer, I didn't do

1 anything, or, sir, I didn't do anything, correct?

2 A. Sir, if possible, plain English. I'm not sure what
3 acquiesce means.

4 Q. For the first time, your testimony was that Mr. Davis
5 knew that he was being struck by officers because, according to
6 your testimony for the first time, he was saying, Officer, I
7 didn't do anything; sir, what did I do, correct?

8 A. Something to that extent, yes.

9 Q. You didn't say that the first time you testified,
10 correct?

11 A. I wasn't asked that the first time.

12 Q. Did you hear Connair's testimony yesterday?

13 A. I did.

14 Q. Officer Connair makes -- gives his narrative that for a
15 significant period of time near the door that he's wrestling
16 with Mr. Davis, that he's got his arms and his head in. Do you
17 recall that testimony?

18 A. Somewhat.

19 Q. And then your testimony is that you have Mr. Davis into
20 like your chest area where you're delivering the knees while
21 he's struck near the door area, correct?

22 A. Correct.

23 Q. And then Officer Johnson also testified and says that he
24 has a grasp on Mr. Davis and is actually wrestling around with
25 him, that he's actually shoved to the door. Do you recall

1 that?

2 A. I do.

3 Q. How could Mr. Davis be in three different places at the
4 same time?

5 A. So --

6 Q. At the door area?

7 A. Sir, if you recall my testimony, my counsel clearly
8 asked me was Officer Connair, Officer Everhart there when I
9 delivered those strikes. And my response was I do not recall
10 them being there, just Officer Johnson. Was that clearly
11 answered for you?

12 Q. When you guys were at the door, is that what you're
13 speaking of?

14 A. I'm speaking of what you just asked me.

15 Q. So four officers were at the doorway of the only place
16 to get in and out of this store where Mr. Davis, off camera,
17 sustains at least six strikes to the head but, yet, he is in
18 the chest and body area of three of the four officers?

19 A. Is that a statement?

20 Q. That's a question.

21 A. Can you reask it?

22 Q. Sure. Would you agree with me that during this door
23 interaction where Mr. Davis is allegedly in the store and goes
24 back towards the entrance and exit of the establishment, that
25 in that area he is struck six times by three different

1 officers?

2 A. According to testimony, but I can't testify that I
3 witnessed that or I observed that day of.

4 Q. You didn't see anybody else strike Mr. Davis at the
5 door?

6 A. I didn't see anybody strike Mr. Davis in the door or at
7 the door.

8 Q. You take your oath as a police officer seriously?

9 A. Absolutely.

10 Q. How about your oath in this courtroom today?

11 A. Absolutely.

12 Q. And for the last two weeks?

13 A. Absolutely.

14 Q. You think you can tell the truth when you feel like it?

15 A. No.

16 Q. Do you think it's important for the integrity of this
17 jury that you tell the truth about all aspects of this case and
18 anything you're asked to that's not overruled by this Court?

19 A. Without a doubt.

20 Q. You and I had a conversation last week about this
21 Facebook instance that took place some six months prior to the
22 utilization of Facebook for Mr. Davis's arrest. Do you recall
23 that?

24 A. Briefly.

25 Q. There was a whole investigation done on that, and you

1 and I had a whole exchange of questions and answers regarding
2 it. Do you recall that?

3 A. Briefly.

4 Q. Well, let's talk about what you do remember. I asked
5 you questions regarding how Mr. Davis got to the store that
6 day. Do you recall that?

7 A. I do.

8 Q. Right. And I'll move on in a moment, but this sense of
9 urgency about we found out last minute or whatever, you knew
10 Mr. Davis was going to this store, correct?

11 A. Right before he went there, yes.

12 Q. Based on the Facebook exchange, correct?

13 A. Based on the text message exchange.

14 Q. And you, in your report, wrote something to the lines of
15 a confidential informant is where we got the information to
16 know that Mr. Davis was going to be at the market?

17 A. That's inaccurate. I did not write a report.

18 Q. Information in the investigation for Mr. Davis's case
19 yielded the fact that you put in information that said we found
20 out Mr. Davis was going to be at the market from a confidential
21 informant. Do you recall that testimony?

22 MS. NOBLE: Objection.

23 THE COURT: Overruled.

24 THE WITNESS: Can you repeat that, please?

25

1 BY MR. SIDOTI:

2 Q. Officer, we talked about that last week.

3 A. I'm asking you to repeat it.

4 Q. I'm asking you about your report that you indicated that
5 you and your team, on September 1st, 2017, knew that Mr. Davis
6 was going to be at the market based on information that you got
7 from a confidential informant. Do you recall that questioning?

8 A. I recall testifying that I did not write the arrest
9 report. That's what I recall.

10 Q. The information that contained the allegation that
11 Mr. Davis was going to be at the market and that the
12 information came to your knowledge by means of a confidential
13 informant, did you disclose that information to your superior
14 officers regarding this investigation?

15 A. I don't recall exactly what was disclosed. What I do
16 recall is me testifying that our chief legal advisor advised
17 that that information is not facts relevant to the case;
18 therefore, it did not need -- it did not need to be included in
19 any arrest paperwork.

20 Q. Right. We talked about this. You use the word omitted,
21 correct?

22 A. Absolutely.

23 Q. You told this jury that your legal advisor -- and you
24 gave up that privilege -- told you to leave that out, to omit
25 the fact that you used Facebook to get to Mr. Davis, correct?

1 A. Yes.

2 Q. Right. You told this jury that from the other
3 instance -- maybe you used the phrase blanket policy, that
4 based on the prior instance, that you had been advised by him
5 to omit the utilization of Facebook, to use the word omitted,
6 correct?

7 A. I did. I said that I could. I don't want to
8 mischaracterize.

9 Q. But you told this jury that you were told that by your
10 lawyer, right?

11 A. Our division's chief legal advisor, which up until we
12 were in court I did not know that he was considered my lawyer
13 as an employee. I thought he just gave us advice on how to do
14 our job.

15 Q. Sergeant, we had this interaction where I asked you an
16 omission to leave something out is much different than putting
17 different information in. Do you recall that?

18 A. I recall that.

19 Q. So just so we're clear, you told this jury under oath,
20 as a cop under oath in this courtroom, that the reason you
21 didn't put the Facebook information in there was because you
22 were advised by your lawyer to omit it because it wasn't
23 important to the facts?

24 A. That's inaccurate.

25 Q. That's what you told them?

1 A. No. I told them I did not submit a report. I never
2 entered that into a report. That's what you told them.

3 Q. I asked you if you disclosed the means that you knew
4 that Mr. Davis was going to be at the market was by means of a
5 confidential informant. Do you recall that questioning?

6 A. I do.

7 Q. Why else would I get into it unless you wrote it down?

8 A. Sir, disclosing and entering it into a report are two
9 different things.

10 Q. Regardless, let's stick with the disclosure. You
11 disclosed that the way that you knew Mr. Davis was going to be
12 at the market was because of a confidential informant. Did you
13 disclose that?

14 A. No. I disclosed what actually happened, and then I also
15 disclosed what was to be omitted per our chief legal advisor.

16 Q. So regardless, your testimony to this jury is the reason
17 that you said confidential informant or omitted the Facebook is
18 because you were advised by your chief legal counsel to do so,
19 correct?

20 A. Correct.

21 MR. SIDOTI: May I approach, Your Honor, the witness?

22 THE COURT: Yes, you may.

23 MR. SIDOTI: I'm going to show you what's been marked
24 as Plaintiff's Exhibit 180.

1 BY MR. SIDOTI:

2 Q. You don't have to read the entire document, Sergeant,
3 but I want you just to look at it for a moment.

4 A. Each document?

5 Q. Can you just flip through that document, all the pages,
6 and identify what it is?

7 A. I'm familiar with it.

8 Q. Can you identify what that is? May I have it back,
9 please?

10 A. Absolutely. It is the routeing sheet and the
11 investigation into the 2016 initial Facebook arrest that
12 Mr. Sidoti referenced.

13 Q. Six months prior to the arrest of Mr. Davis, correct?

14 A. That's inaccurate. Mr. Davis was arrested
15 September 1st, 2017. That was in 2016 sometime, and that was a
16 year and some change prior to that.

17 Q. I apologize. From the day recorded. August 2nd of
18 2016. Does that sound more familiar?

19 A. Over a year, yes.

20 Q. So we dealt -- you have dealt with the specific issue
21 regarding Facebook as we discussed during your adverse direct
22 by the plaintiff's table, correct?

23 A. That's accurate.

24 Q. And this is in part what we discussed when you indicated
25 that you omitted the facts of utilizing Facebook and how you

1 found Mr. Davis because you were advised by your chief legal
2 counsel, correct?

3 A. Yes.

4 Q. Did you see that he was investigated in this case?

5 A. That who was investigated?

6 Q. That is your -- strike that.

7 Did you note that Mr. Furbee was interviewed by your
8 supervising officer regarding the allegations in your Facebook
9 utilization in this 2016 case?

10 A. I noted that Mr. Furbee, our chief legal advisor, was
11 interviewed by the IA sergeant conducting the investigation.

12 Q. Specifically regarding what you told this jury, the
13 reason that that information was omitted, correct?

14 A. Can you repeat that?

15 Q. Mr. Furbee was asked specifically about you claiming
16 that he told you to omit the Facebook information from the
17 facts. Are you aware of that?

18 A. Am I aware at what point?

19 Q. Are you aware that when this investigation for the 2016
20 Facebook investigation against you was done, that your superior
21 officer interviewed Mr. Furbee regarding your allegation that
22 he had told you to omit the information about Facebook to the
23 facts of that case?

24 A. I'm aware, which led to the exoneration.

25 Q. After a DCC, though, correct?

1 A. Negative. I grieved the DCC and our deputy chief, who
2 is the final arbiter, disagreed with the acting deputy chief,
3 which was a commander who recommended discipline. The
4 commander can't issue. He can only recommend. The deputy
5 chief, which was Chief Kebbler at the time, disagreed and I was
6 exonerated. It's actually in there, if you open it up.

7 Q. Similar to what Bash did in regards to Reffitt's use of
8 force, right?

9 MS. NOBLE: Objection.

10 THE COURT: Sustained.

11 BY MR. SIDOTI:

12 Q. Is that a similar process is what I'm asking?

13 A. It is not.

14 Q. I want to be clear so the jury is clear. A
15 recommendation was made that you, in essence, get sanctioned.
16 You were. You appeal it to your chain of command and then you
17 got exonerated, correct?

18 A. I can clarify.

19 Q. I just want you to answer my question. Do I have it
20 correctly?

21 A. No.

22 Q. I'm going to show you an unredacted page.

23 MR. SIDOTI: If I may approach, Your Honor?

24 THE COURT: Yes.

25

1 BY MR. SIDOTI:

2 Q. Page 194 of Plaintiff's Exhibit 180. If you could
3 briefly look at the highlighted area, Sergeant.

4 Let me know when you're done with that, please.

5 A. You say just the highlighted portion?

6 Q. Sure. Did you read it?

7 A. I did.

8 Q. May I have that. Your lawyer, your chief legal counsel,
9 was interviewed by your superior officer during this 2016
10 Facebook and indicates that he never told the officer that the
11 Facebook information should be omitted from the statement of
12 facts. Is that on this document?

13 A. That is on the document.

14 Q. So you just told this jury for two weeks that you were
15 advised by your lawyer to omit the Facebook information, and
16 your legal counsel that you referenced on that stand under oath
17 wrote in a report that he never told you that?

18 A. I just testified to this jury today and last Monday that
19 our chief legal advisor stated that I could omit the
20 information --

21 Q. Come on.

22 A. -- which led to the exoneration.

23 Q. Sergeant, you told this jury, when I asked you ad
24 nauseam about why you would put CI because it's not an
25 omission, you said you were advised by your lawyer to omit that

1 information because it dealt with tactical information. Do you
2 recall that testimony?

3 A. That I could. I disagree.

4 Q. That you could?

5 A. That I could. I'm speaking English, sir.

6 Q. Fine. If you could then you didn't omit it, then it's
7 just a flat lie. If it's not an omission, then you put in
8 false information. Which one is it?

9 MS. NOBLE: Objection.

10 THE COURT: Sustained.

11 BY MR. SIDOTI:

12 Q. Is there any other lies you want to clarify for this
13 jury in week two of trial, Sergeant?

14 MS. NOBLE: Objection. Argumentative.

15 THE COURT: Sustained.

16 BY MR. SIDOTI:

17 Q. Can you tell me where the use of force policy tells you
18 that you can rip people's hair out of their head?

19 A. It doesn't state that under any circumstances.

20 Q. Did you rip Mr. Davis's hair out of his head when you
21 were pulling him down by his dreads?

22 A. I saw Mr. Davis's dreadlocks in the store. So I assume,
23 since I had ahold of his head and he was trying to jerk away,
24 that it was me that caused his dreadlocks to come out of his
25 head.

1 Q. When he was trying to jerk away in that portion of the
2 video?

3 A. He tried to jerk away the entire video. We seen it ad
4 nauseam. There's no debating that.

5 Q. We've already asked the question several times. You
6 understand that as an officer, you have to justify every single
7 use of force you deliver. Do you understand that?

8 A. I understand it more than most being a defensive tactics
9 sergeant.

10 Q. So when you rip Mr. Davis's hair out of his head, his
11 pants were already at his ankles and he had just been struck
12 twice in the face by Officer Connair. Do you recall that in
13 the video?

14 A. I recall that in the video.

15 Q. Was he jerking away or was he just punched twice in the
16 face with handcuffs? Or was it both?

17 A. It was a multitude of things.

18 Q. You think, as an officer, that the public gives you a
19 little bit more trust because you're behind that badge?

20 A. I'd say.

21 MS. NOBLE: Objection.

22 THE COURT: Sustained.

23 BY MR. SIDOTI:

24 Q. During your direct examination Ms. Noble was asking you
25 questions about football status. Do you recall that?

1 A. Football status?

2 Q. Like you were a D1 athlete that received national
3 recognition for courage and whatever you got from the Rudy
4 award, correct?

5 A. That's accurate.

6 Q. So when she was making reference to Mr. Davis's tenure
7 in Little League football, those two really aren't the same
8 thing, are they?

9 MS. NOBLE: Objection.

10 THE COURT: Overruled.

11 THE WITNESS: Football is football. But if you're
12 regarding the level of skill, they're nothing alike.

13 BY MR. SIDOTI:

14 Q. If you claim you're given the option that you could omit
15 the information, what do you think that means in regards to
16 either telling the truth or strictly omitting it?

17 A. The difference between omitting and lying is the
18 omission is as long as it's not relevant to the case. That's
19 the way I understood it. That's the way the definition reads.
20 That's what took place.

21 The Facebook arrest in 2016, Facebook was irrelevant to
22 the facts of the case. And the event of Mr. Davis resisting
23 arrest, Facebook had nothing to do with Mr. Davis resisting
24 arrest, zero. He had warrants. It had zero to do with it.

25 Q. You know what it deals with, Sergeant? It deals with

1 your credibility. Would you agree with that?

2 MS. NOBLE: Objection.

3 THE COURT: Overruled.

4 THE WITNESS: Not at all.

5 BY MR. SIDOTI:

6 Q. You told this jury that the reason you were allowed to
7 omit information that we find out months later, years later
8 where you're five years removed, that you utilized a
9 confidential informant in his case as opposed to you doing
10 Facebook on another false Facebook handle was because you claim
11 you were advised by a lawyer to do it, right?

12 MS. NOBLE: Objection, Your Honor. May we have a
13 sidebar?

14 THE COURT: Yes.

15 - - -

16 (The following proceeding was held at sidebar.)

17 THE COURT: Go ahead, Ms. Noble.

18 MS. NOBLE: Mr. Sidoti keeps indicating that Sergeant
19 Morefield indicated that he said confidential informant in a
20 report. That's not accurate. He indicated that -- that he was
21 allowed to omit that information from something that we call a
22 U-10, which is the arrest report, because it's an investigation
23 tactic.

24 THE COURT: Are you talking about he said that when
25 Mr. Sidoti cross-examined him in the plaintiff's case in chief?

1 MS. NOBLE: Yes, Your Honor.

2 THE COURT: Okay.

3 MS. NOBLE: And he keeps stating that Sergeant
4 Morefield used this confidential informant language. And I
5 don't think that that's -- I think that's a mischaracterization
6 of the evidence. I think somebody else may have done that. I
7 don't believe Sergeant Morefield was the person that used that
8 term.

9 THE COURT: Here's my position. The jury heard the
10 testimony, and I'm going to trust the jury that they remember
11 it.

12 Mr. Sidoti, why is this not asked and answered?

13 MR. SIDOTI: I'm done. I'm going to finish up with
14 the last question and then I'm done.

15 THE COURT: Good enough.

16 MS. NOBLE: Thank you, Your Honor.

17 (The following proceeding was held in open court.)

18 THE COURT: Please continue, Mr. Sidoti.

19 BY MR. SIDOTI:

20 Q. Do you think transparency is important in this case?

21 A. Absolutely.

22 Q. Do you think that transparency is important for the
23 entire core and essence of this judicial system?

24 A. Absolutely.

25 Q. Anything else you mischaracterized in the last two weeks

1 that I haven't specifically brought up that you want to tell
2 them now?

3 MS. NOBLE: Objection.

4 THE COURT: Sustained.

5 MR. SIDOTI: I have nothing further.

6 THE COURT: Redirect, Ms. Noble.

7 MS. NOBLE: Very briefly, Your Honor.

— — —

9 | REDIRECT EXAM

REDIRECT EXAMINATION

10 BY MS. NOBLE

11 Q. Sergeant Morefield, have you truthfully disclosed your
12 use of Facebook in this incident?

13 A. I have.

14 Q. To this jury?

15 A. To this jury, yes.

16 Q. And Mr. Sidoti brought up uses of force that you,
17 Officer Johnson, and Officer Connair used. Were these all at
18 the same time?

19 A. They were not.

20 MS. NOBLE: Nothing further, Your Honor.

21 THE COURT: Thank you. Any recross, Mr. Sidoti?

22 MR. SIDOTTI: No, sir. Thank you.

23 THE COURT: Sergeant Morefield, thank you. You may be
24 excused.

25 Ms. Pickerill, your next witness.

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3 - - -

4 FRIDAY AFTERNOON SESSION

5 DECEMBER 17, 2021

6 - - -

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9 THE COURT: Ms. Rosenberg, your next witness.

10 MS. ROSENBERG: The defendant would call Officer
11 Reffitt.

12 THE COURT: Officer Reffitt, please come forward.
13 You're still under oath.

14 - - -

15 ROBERT REFFITT

16 Called as a witness on behalf of the Defendant, being first
17 duly sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MS. ROSENBERG:

20 Q. Officer Reffitt, can you re-introduce yourself to the
21 jury?

22 A. Officer Robert Reffitt.

23 Q. How long have you been with the Columbus Police
24 Department?

25 A. Eighteen years.

1 Q. And did you have any prior employment to joining the
2 police force?

3 A. No, no other police agencies.

4 Q. Any other types of employment?

5 A. Yeah. I drove a tow truck for a while, dump truck, and
6 then I worked for the City of Columbus in their fleet
7 management department.

8 Q. Why did you decide to go to the police academy?

9 A. At the time I had two kids and was working about 80
10 hours a week, and it was a job I could get to cut that in half.

11 Q. And you heard previous testimony about the six-month
12 Columbus Police Academy?

13 A. Yes.

14 Q. Did you also complete the same?

15 A. Yes.

16 Q. Did you also complete defensive tactics training during
17 the academy?

18 A. Yes, we all did.

19 Q. And are you also required to do that annual follow-up?

20 A. Yes. Every year we have a DTU class and also
21 in-service.

22 Q. Besides that mandatory follow-up, are there other
23 elective defensive tactics courses you can take?

24 A. You can if you sign up for it. Usually a couple times a
25 year they will offer like a more advanced -- but like an

1 additional class if you wish to take it.

2 Q. Okay. Have you ever been a field training officer or
3 anything like that?

4 A. Yeah. I was a field training officer for a few years.
5 I did seven or eight recruits in training. I also do a basic
6 OPOTA instructor through the state of Ohio which I will go to
7 the academy for drivers training because I have my drivers
8 instructor's certificate just for the recruits every class,
9 just for the driving instruction part.

10 Q. How long have you done that?

11 A. Five or six years now.

12 Q. And what's your current assignment?

13 A. I'm a detective in our felony assault unit.

14 Q. How long have you been doing that?

15 A. I went up there this last June.

16 Q. Any more other special assignments that you want to tell
17 us about?

18 A. I did some temporary assignments with the gang unit
19 mostly. I'd go up two or three times a year, help them out
20 with that. Just from working the same precinct when I was on
21 patrol pretty much my whole career, I got to know a lot of the
22 people. Then as time goes on, everyone gets older, I ended up
23 dealing with their kids; so, you know.

24 Q. Let's go right to September 1st, 2017. Do you recall
25 where you were at just prior to going to the Livingston Market?

1 A. Yes. Myself and Officer Baker were up north off of 161,
2 Tamarack, area checking an address when we got a call on the
3 radio, I believe, from Officer Connair that they had contact
4 and wanted us to get south to the F&L Market.

5 Q. Do you recall how long it took for you to get there?

6 A. No, not offhand. Not that long. We were kind of
7 hurried a little bit.

8 Q. And when you got there, what do you remember happening
9 when you went through the door?

10 A. I knew that they had been there -- like I said, myself
11 and Officer Baker were at the traffic light a little east of
12 the store at Alum Creek and Livingston. They had come on the
13 radio and said, Hey, we believe he's inside, we're going to go
14 in. Officer Baker said, Hey, hold on, we're just up the
15 street.

16 And after that we had no more radio contact. So I had
17 to wait for the light to turn green, then we made our way to
18 the store. And then Officer Baker got out. He was the
19 passenger. He got out first. I got out but then hesitated for
20 a second because I had to get the key fob for the car. I
21 didn't want someone taking the car with all of our stuff in it.
22 That's when I made my way into the front door.

23 Q. You've heard testimony about a 10-3 call. Did you
24 arrive before or after that, do you know?

25 A. I did not hear that call. I don't know if that occurred

1 as I was getting out of the car, but I didn't recall hearing
2 it.

3 Q. When you went inside, you weren't aware of that, to your
4 knowledge?

5 A. No. I assumed everybody was inside because their car
6 was parked out front.

7 Q. So when you went inside, tell me what you were hearing
8 and seeing initially.

9 A. Initially, when I first entered through the door, I seen
10 everybody in the aisle just kind of struggling. I remember
11 seeing Officer Everhart look back at me, and I heard him say
12 get the taser. And then, of course, we didn't have it because
13 we had just turned it in because it was getting close to the
14 end of our shift and we had to leave it for third shift
15 officers.

16 And then -- so then that's when I came up behind.
17 Mr. Davis was kind of on all fours with his rear in the air.
18 Officer Everhart was behind, and then I seen Officer Johnson
19 trying to get his left arm out, and then Officer Connair was on
20 the right side of him. So at that point I knew that they were
21 obviously having trouble getting his arms out to get him
22 handcuffed.

23 Q. What were you hearing? Were you hearing anything that
24 you recall?

25 A. A lot of yelling, some from Mr. Davis and then from the

1 officers, and then just everybody starting to give commands to
2 put your hands behind your back and all that stuff. That's
3 when I started to attempt to get him to flatten out.

4 Q. What did you do in order to do that?

5 A. So I was trying to get my -- I took my right foot and I
6 pushed it on his lower backside trying to not only push down
7 but also push him forward to get him to flatten out, just to
8 get him prone out on the ground and not be up because he's
9 trying to -- can't really stand up from that point but he's
10 trying to raise up as if trying to get to his feet.

11 Q. At that point did you see Mr. Davis in handcuffs at all?

12 A. No. I did not see the initial first handcuff that other
13 people had testified, that his right hand had got a handcuff on
14 it at some point. We was just trying to knock him forward, and
15 that wasn't working. So then at that point is when I delivered
16 the kick to his left inner femoral area of his leg to try to
17 jolt the leg to numb it or at least knock it out to where we
18 can get him prone and flat. I figured at that point it would
19 be easier to get his hands out from underneath him.

20 Q. And was that effective?

21 A. No.

22 Q. So what did you do after that?

23 A. So after that I then -- believe I then with my left knee
24 on Mr. Davis's back, again with my foot still off of his rear,
25 I was again trying to then apply more of my body weight to push

1 him down, and also with my foot kind of over his rear to try
2 and push him forward, you know. And then that also was -- that
3 wasn't working.

4 Q. So after you did that, was Mr. Davis in handcuffs at
5 that point?

6 A. No.

7 Q. So what did you do next?

8 A. At that point I then moved around to the left side of
9 Mr. Davis. And then I know Officer Johnson was still trying to
10 get the left arm out. So that's when I delivered -- but he
11 then -- back up a little bit. At that point Mr. Davis had went
12 flat. So Officer Johnson was trying to pull his left arm out
13 from underneath him. I remember I had my -- I had my cuffs out
14 because I wasn't sure whose, what, or who had cuffs.

15 And he was still struggling trying to pull his arm out.
16 That's when I delivered three to five kicks to Mr. Davis's left
17 side trying to get him hopefully to bring his arm out to stop
18 the kicks or to protect himself on that side to where then just
19 leverage we could get his arm behind him and get him cuffed.
20 And that -- those kicks were ineffective. They didn't work
21 because he never brought his hand out. That was the end of my
22 force at that point because nothing was working.

23 Q. When you noticed that wasn't effective, where did you
24 position yourself at that point?

25 A. I was still on the left side. And then eventually, I

1 believe, just once he reached the point of exhaustion, they
2 were finally able to get his hands out enough to where then the
3 one cuff was on his right arm. So I was able to get a cuff on
4 his left arm and then link the two cuffs together. So it was a
5 wider --

6 Q. So you used your handcuffs?

7 A. Yes. They were a pair of my handcuffs. And then I just
8 linked those to the cuff that were on his right hand. So he
9 was double cuffed.

10 Q. At what point do you recall any other uniform officers
11 arriving in that sequence?

12 A. Before we finally got his hands out, they said -- now I
13 know it was Officer Bennett. Before that I didn't know who it
14 was. I knew the taser had been deployed. With Mr. Davis's
15 actions and everything else, to me, it wasn't working. I heard
16 the initial pop, and then I heard it going through its cycles.
17 But it wasn't effective. It wasn't doing anything. It wasn't
18 the usual behavior or -- it didn't seem to me that there was
19 any lockout like I'm used to seeing.

20 Q. And have you used a taser before?

21 A. Yes, I have.

22 Q. So what were you expecting to be the result of using a
23 taser?

24 A. I was expecting him to just pretty much lock out, you
25 know, get stiff. And usually when that occurs, we're able to

1 just move the arms. And then once it releases, then you get
2 that second of release that we can get everything there and get
3 him handcuffed.

4 Q. And you didn't see that happening during the taser
5 cycle?

6 A. No.

7 Q. After you used your cuff to connect to the other cuff,
8 did you use any additional uses of force on Mr. Davis?

9 A. No.

10 Q. Did you see any additional uses of force?

11 A. No.

12 Q. How are you feeling after that happened, after the
13 handcuff?

14 A. Relieved but also still kind of in a state of shock
15 because I never had anyone fight that long not giving up their
16 hands. It was a -- it was very rare. When you see it on
17 YouTube, in other cities, stuff like that, but just to have it
18 there, it wasn't normal.

19 Q. Had you had prior interactions with other individuals
20 where they resisted arrest before?

21 A. Yeah, we had plenty of resistings, but nothing to that
22 magnitude.

23 MS. ROSENBERG: I don't have anything else, Your
24 Honor.

25 THE COURT: Thank you, Ms. Rosenberg.

1 Mr. Sidoti, cross?

2 MR. SIDOTI: Thank you, sir. Just one moment, sir.

3 THE COURT: All right.

4 | - - -

RECROSS-EXAMINATION

6 BY MR. SIDOTI:

7 Q. Officer, how are you?

8 A. Good. Thank you.

9 Q. Is it sergeant now?

10 A. No.

11 Q. Just detective, correct?

12 A. Still an officer.

Q. So, Detective, I don't have much, but I want to ask you something regarding the commute. You and Officer Baker were in a separate car from the other four officers that arrived at the market, correct?

17 A. Correct.

18 Q. You recall Officer Baker's testimony this afternoon?

19 A. Yes.

20 Q. He indicated for the ladies and gentlemen of the jury
21 that he thought you guys were about 12 miles away. Do you
22 recall that?

23 A. Yes.

24 Q. He was asked about the time frame and gave kind of a
25 jovial recitation to the jury about how we stopped at every

1 light, kind of a wink and a nod, to get there in quick time in
2 approximately 12 minutes. Do you recall that testimony?

3 A. Yes.

4 MR. SIDOTI: May I approach the witness for a moment,
5 Your Honor?

6 THE COURT: Yes you may.

7 BY MR. SIDOTI:

8 Q. I want to show you what's been previously marked as
9 Plaintiff's 162.

10 For the purposes of the record, Plaintiff's 162 is the
11 internal affairs memorandum by Sergeant Johnson. Turn to Bates
12 stamp 231. There is a highlighted green area that I've shown
13 to your counsel. Can you look at that area for a moment, sir?
14 Just let me know when you're done.

15 A. Okay.

16 Q. Did you have the opportunity to review that, Officer
17 Reffitt?

18 A. Yes.

19 Q. I know we didn't look through the entire document. Have
20 you reviewed this document before?

21 A. No, I don't believe I have.

22 Q. Has this information been privy to you in regards to the
23 internal affairs investigation that was done by Sergeant
24 Johnson?

25 A. As far as whether it was provided?

1 Q. Yeah. Was the information provided to you?

2 A. I believe, but I don't remember reading it because I
3 didn't agree with Sergeant Johnson's findings and --

4 Q. Right. So I want to talk about that for a moment.

5 I don't want to talk about the discipline that came and
6 went through the chain of command regarding you. I want to
7 talk about just the information that you reviewed. Did you
8 have an opportunity to review that?

9 A. Yes.

10 Q. Do you recall when you were investigated by either
11 Sergeant Johnson and/or Sergeant Van Dop that you, in fact,
12 told them this information, that you and Officer Baker arrived
13 in approximately five minutes which had elapsed from the last
14 radio communication? Do you recall that?

15 A. That's what it says.

16 Q. Do you recall that being your recollection of the date
17 of the time in which you engaged Mr. Davis on September 1st?

18 A. I remember it being some time from -- when we went from
19 where we were up north to where we got to Alum Creek and
20 Livingston. That's when they said they were going in. It was
21 from that point until we got to the store that there was no
22 more radio transmissions. But from Alum Creek and Livingston
23 to the store wasn't five minutes.

24 Q. I understand. But even your testimony just a moment ago
25 on direct was, when asked by your counsel -- and I quote, we

1 were just up the street. Do you recall that testimony just a
2 moment ago?

3 A. No. Which part?

4 Q. When you were asked before coming to the market about
5 where you were just a moment ago on direct testimony, and I
6 quote --

7 A. When I said up the street -- we were in the north end at
8 161 and Tamarack. That's further than up the street.

9 Q. When you gave your interview with Sergeant Johnson
10 and/or Sergeant Van Dop, do you believe that the information
11 you provided them was honest and accurate?

12 A. Well, I'm just saying for what Sergeant Johnson wrote in
13 there, as he did in another part of the letter, was wrong
14 information. So I'm wondering if he might have had something
15 confused when he put five minutes, because there's no way five
16 minutes you can go from 161 and Tamarack to Alum Creek and
17 Livingston.

18 Q. Let's talk about a mistake in information then.

19 MR. SIDOTI: Could I have access for just Counsel and
20 the witness, Your Honor?

21 THE COURT: Yes, you may.

22 BY MR. SIDOTI:

23 Q. I'm going to show you in just a moment your use-of-force
24 report, if I can. 154.

25 MR. SIDOTI: May I show this document to the witness?

1 THE COURT: Yes, you may.

2 BY MR. SIDOTI:

3 Q. Officer, while this is getting set up, we had some
4 colloquy, some questions back and forth regarding a
5 use-of-force report regarding Mr. Davis and then briefly
6 inquired about a worker's comp claim.

7 MS. ROSENBERG: Objection. Outside the scope.

8 THE COURT: I'm going to allow Mr. Sidoti to finish
9 his question, then you may reimpose your objection.

10 Officer, wait until the question is asked. Your lawyer
11 may have an objection. So I'm asking you not to answer
12 immediately. All right?

13 THE WITNESS: Yes, Judge.

14 BY MR. SIDOTI:

15 Q. Officer Reffitt, do you recall previously some questions
16 that were asked regarding the conduct allegedly of Mr. Davis
17 and a workers' comp claim that you made with the department?
18 Do you recall that?

19 MS. ROSENBERG: Objection. Outside the scope.

20 THE COURT: Overruled. You may answer.

21 THE WITNESS: Yes.

22 BY MR. SIDOTI:

23 Q. When it comes to the workers' comp claim, you have an
24 obligation to fill out documents referencing how you think the
25 injury was caused to see if it's something that's covered

1 perhaps by the department or not, correct?

2 A. Correct.

3 Q. Do you think it's important to be honest and forthright
4 regarding that, to see if it's a claim that's potentially
5 covered by the department or not?

6 A. Yes.

7 Q. For example, if you go and hurt yourself while you're
8 home gardening, that's not something that's going to go to your
9 workers' comp, correct?

10 A. Correct.

11 Q. I can show you, if you don't remember -- do you remember
12 when we discussed your use-of-force report, do you remember you
13 sustained an injury because Mr. Davis kicked you? Do you
14 recall that?

15 A. In my 128, yes.

16 Q. That's not correct, though, is it?

17 A. No. At the time when I filled that out was right after
18 the incident. And I sustained the injury during the
19 confrontation. And since I was dealing with Mr. Davis pretty
20 much from his waist down, I did put in there that I just
21 assumed that during that whole scuffle that I had been kicked.

22 Q. Officer Reffitt, but you filled out the workers' comp
23 form with your department on the exact same day, did you not?

24 A. The same day as the 28th?

25 Q. Yes.

1 A. Yes. We're required to fill out an injury packet.

2 Q. So the same day you told this jury that you wrote that
3 down but you weren't sure because it was tumultuous or chaotic,
4 but you say in your 128: I was injured because Mr. Davis
5 kicked me. But then told this jury you were confused. But you
6 admit that the workers' comp form for the injury was filled out
7 on the exact same day, correct?

8 A. Which they would match.

9 Q. Okay. May I have this. It's not working.

10 Can you see that on the screen there, sir?

11 A. Yes.

12 THE COURT: Just a second.

13 Ms. Rosenberg?

14 MS. ROSENBERG: Your Honor, can we have a sidebar,
15 please?

16 THE COURT: Yes.

17 - - -

18 (The following proceeding was held at sidebar.)

19 THE COURT: Go ahead, Ms. Rosenberg.

20 MS. ROSENBERG: Your Honor, we received a subpoena
21 during trial yesterday regarding the BWC records that
22 Mr. Sidoti is about to reference. We got those records
23 sometime today, and I provided those records to Ms. Gelsomino.
24 I indicated that I would like to discuss these records with the
25 Court prior to using them because I had not got a chance to

1 redact nor actually review the records.

2 THE COURT: Okay.

3 MS. ROSENBERG: So I don't think it's proper to be
4 using these for impeachment when I already told them I didn't
5 have time to look at these documents.

6 THE COURT: You have a right under the rules to see
7 this impeaching document. But Mr. Sidoti, are you going to
8 use -- I'm assuming that the document says that he injured his
9 leg somewhere else?

10 MS. PICKERILL: It actually says both, Your Honor.

11 THE COURT: All right. How long is the document?

12 MR. SIDOTI: This is the only thing I'm going to show
13 him -- the document is 21 pages -- the actual form he filled
14 out with the department for the accident report on that day.
15 That's it.

16 MS. PICKERILL: He also filled out this one on 9-1.

17 MR. SIDOTI: That's the reinjury. That's when he was
18 kicked. That's this one, but this is him going back.

19 MS. PICKERILL: Date reported 9-1-17.

20 THE COURT: Hold up.

21 It's going to take you about -- I mean, if you think
22 that you need to take a recess to look at all 21 pages, that
23 would strain the Court's credulity. If you need to take a
24 brief recess to look at the pages he's going to impeach, I can
25 understand that. And if you need to -- well, he's on

1 cross-examination. So you can't talk to your witness. Do you
2 expect that there's something else in the 21 pages that has
3 anything to do with this impeachment?

4 MS. ROSENBERG: Your Honor, I'm just --

5 THE COURT: This document is not coming in as
6 substantive evidence. It's just coming in for impeachment.
7 It's like any other impeaching document. So you have a right
8 to see it. But what I'm asking you, as a practical matter --
9 it's 4:30. We're trying to get this case completed -- just a
10 second. I want everybody's attention focused. So we're trying
11 to get this case completed with some dispatch. You tell me how
12 much time you're going to need to review these documents
13 because I'm going to let him use the document for impeachment
14 purposes. It's not coming in as substantive evidence. You
15 tell me, Ms. Rosenberg, how much time you need.

16 MS. ROSENBERG: I would say ten minutes, Your Honor.
17 I just --

18 THE COURT: Ten minutes is fine.

19 MR. SIDOTI: That will be my last question.

20 THE COURT: Ms. Rosenberg, ten minutes is fine. Take
21 your ten minutes.

22 (The following proceeding was held in open court.)

23 THE COURT: Ladies and gentlemen, we're going to take
24 a ten-minute recess. Counsel has to review a document. I'm
25 going to let you go back so you can stretch in the comfort of

1 your own room. And we will resume at 4:40.

2 (Recess taken from 4:30 p.m. to 4:40 p.m.)

3 (Jury in at 4:40 p.m.)

4 THE COURT: Please proceed, Mr. Sidoti.

5 MR. SIDOTI: Ms. Evans, would you read back the last
6 question and answer, please.

7 (Thereupon, the last question and answer was read by the
8 court reporter.)

9 BY MR. SIDOTI:

10 Q. You see on your screen there, Officer Reffitt -- I'm
11 going to go to the top for this. Tell me after you've had a
12 moment to review that document, please.

13 A. Yes.

14 Q. Before I ask you any other questions, how much time do
15 you recall between the time you filled out your U-128 form and
16 between the time that you filled out this document for a
17 workers' comp claim?

18 A. That I don't know.

19 Q. The same evening?

20 A. I'm not sure.

21 Q. Let's go back for a moment to September 1st, 2017.
22 Mr. Davis was arrested at approximately ten o'clock at night,
23 correct?

24 A. Yes.

25 Q. Where did you go after Mr. Davis was taken in the paddy

1 wagon with Officers Johnson and Connair?

2 A. I believe I went back to the sub, 12 sub.

3 Q. That would have been the place which you would have
4 filled out your U-128 and potentially your workers' comp form,
5 correct?

6 A. More than likely.

7 Q. Do you recall what time you left there that evening?

8 A. I do not.

9 Q. What's your shift, as you recall it today, back with the
10 working group or with the department overall on that particular
11 day, if you remember?

12 A. I don't recall because we had varied hours. But I
13 believe on that day it might have been 3P to 11P.

14 Q. If you don't recall the exact time frame, you just had
15 an opportunity to review a document regarding your workers'
16 comp claim, correct?

17 A. Yes.

18 Q. And the question before you looked at that document that
19 I posed related to the information in your U-128 and to compare
20 it to what you recall putting into your workers' comp form. Do
21 you recall that?

22 A. I'm sorry. What were you asking me?

23 Q. On the U-128, you said that Mr. Davis kicked you, right?

24 A. Correct.

25 Q. And then you just told this jury -- and my last question

1 was they should say the same thing or along those lines. Do
2 you recall that?

3 MS. ROSENBERG: Objection.

4 THE COURT: Basis?

5 MS. ROSENBERG: I would ask that the witness be shown
6 this entire document so he can see what date he completed it.
7 He wasn't able to see everything.

8 THE COURT: When you say "the entire document," to
9 what are you referring, Ms. Rosenberg?

10 MS. ROSENBERG: Your Honor --

11 THE COURT: You're talking about the entire 21-page
12 document?

13 MS. ROSENBERG: No. The form that he completed on the
14 date in question.

15 THE COURT: Do you have a copy of the form,
16 Mr. Sidoti?

17 MR. SIDOTI: Your Honor, it was provided to me less
18 than an hour ago from the defense.

19 THE COURT: Is this the document that's on the screen
20 now?

21 MS. ROSENBERG: It's not every page, Your Honor. I'm
22 sorry.

23 THE COURT: Is there a way that we can scroll through
24 the pages so that the officer can see it?

25 MR. SIDOTI: Yes, sir.

1 THE COURT: Let's do that. But could you -- could we
2 focus on the part about which he's being questioned? And he
3 can certainly look at the entire document, Ms. Rosenberg,
4 before he answers the question. You wanted to make sure he had
5 context; is that right?

6 MS. ROSENBERG: Yes, Your Honor.

7 THE COURT: But it's a document that he's completed;
8 is that right?

9 MS. ROSENBERG: Yes, Your Honor. But he's being asked
10 about the date he completed it. I want him to see the date.

11 THE COURT: Absolutely. So let's get to the page that
12 would reflect the date so that the officer can see it.

13 MR. SIDOTI: The defense would like to redact the
14 document prior to tendering it to us, Judge. I don't know how
15 long that's going to take.

16 THE COURT: You're going to show the document to the
17 officer now, and you're going to show him the page that has the
18 date on it. And that's going to be done now.

19 MR. SIDOTI: Judge, I have it ready. I can scroll
20 through the entire indictment.

21 THE COURT: I want him to see the page that has the
22 date on it.

23 BY MR. SIDOTI:

24 Q. Can you see the document, Officer?

25 A. Yes.

1 Q. I'm going to scroll through.

2 THE COURT: Have we gotten to the page that has the
3 date on it yet, Ms. Rosenberg?

4 MS. ROSENBERG: Yes, Your Honor.

5 THE COURT: We have?

6 MS. ROSENBERG: It's on the screen now, Your Honor.

7 THE COURT: Okay. Do you see that, Officer?

8 THE WITNESS: Yes, I do.

9 THE COURT: And is that your signature on that?

10 THE WITNESS: If you go up a little bit. Yeah, it
11 looked like I signed it on 9-2. So apparently this form was --

12 THE COURT: Good enough. Is there any more that you
13 wish your witness to see, Ms. Rosenberg? Is there anything
14 else you want to direct his attention to?

15 MS. ROSENBERG: No, Your Honor. Thank you.

16 MS. NOBLE: Please continue with your examination,
17 Mr. Sidoti.

18 BY MR. SIDOTI:

19 Q. If I may, Officer, set this up again. And I want to get
20 through it quickly. Your U-128 form was filled out the same
21 evening or maybe after midnight that you had interaction with
22 Mr. Davis, correct?

23 A. Yes.

24 Q. In that U-128 form, you told sergeants through that
25 form, Van Dop and Johnson, that Mr. Davis kicked you, correct?

1 A. Yes.

2 Q. And then we talked about how it's chaotic or whatever it
3 may have been. Then I asked you about workers' comp in which
4 you indicated that you executed the documents perhaps the same
5 evening that you executed your U-128, correct?

6 A. Yes. And after looking at it at the bottom of this one
7 when I signed it, it looks like it was the next day.

8 Q. Mr. Davis was arrested around ten, maybe 10:30, correct?

9 A. Correct.

10 Q. Do you remember staying at the station after midnight
11 that evening?

12 A. I don't recall.

13 Q. But for the sake of 9-1 to 9-2, a time frame, whether
14 it's 11:30 to 12:05, you don't have that information or
15 recollection for this jury, do you?

16 A. No, I don't.

17 Q. And my question to you was, although you were confused
18 about Mr. Davis kicking you, what did you put on the form for
19 workers' comp? Do you recall that questioning?

20 A. Yes.

21 Q. And you indicated to the jury it would have said the
22 same thing, right?

23 A. I assumed. But looking at this, obviously it does not.

24 Q. Right. This says nothing about Mr. Davis kicking you in
25 the form you completed to have workers' compensation as a

1 result of your interaction with him on September 1st, 2017,
2 correct?

3 A. Correct. Because due to the confrontation was the
4 injury. It didn't change much.

5 Q. I just want you to look at the line that starts with
6 describe how accident occurred. Do you see that?

7 A. Yes, sir.

8 Q. Fighting with a wanted felon on a hard floor covered in
9 Faygo pop and cotton candy. Leg inserted, knee twisted, or
10 slipped in pop and toe hurts from kicks applied to subject.

11 Does that accurately depict the information you wrote in
12 your workers' comp form the night you engaged with Mr. Davis?

13 A. Yes.

14 Q. That's not the same as Mr. Davis kicking you, is it,
15 sir?

16 A. No.

17 Q. You told this jury that you couldn't even remember what
18 occurred because it was so chaotic, that you couldn't even
19 remember information when you're dead sober, not under the
20 influence of drugs, to remember that you weren't kicked in the
21 knee but hurt it slipping in pop, right, that's what you told
22 them?

23 A. Because at the initial time during the confrontation,
24 everything was chaotic. That's when I filled that out. I
25 dealt with Mr. Davis pretty much from his waist down. With

1 everything going on, it was just, you know -- but Mr. Davis
2 wasn't charged with it, nor was I looking to file charges for
3 it. It was just it got injured during a confrontation. And at
4 the time I thought I had been kicked.

5 Q. Kicking an officer is a felony, isn't it?

6 A. Hence, there was no charges filed because I didn't know,
7 nor was trying to file charges for the assault because I didn't
8 know.

9 Q. Officer, you told this jury that it was so chaotic for
10 your involvement, you couldn't remember after you left the
11 scene, drove to the department to fill out government documents
12 that it just maybe slipped your mind. But you expect this jury
13 to believe that Mr. Davis was kicked and punched and brutalized
14 for minutes in the face and in the head that you expect him to
15 abide by a command in less than half a second?

16 A. To give up his hands?

17 Q. Yes.

18 A. Yeah. It's not that hard.

19 MR. SIDOTI: Nothing further.

20 THE COURT: Ms. Rosenberg, any redirect?

21 MS. ROSENBERG: Just briefly, Your Honor.

22 THE COURT: Please.

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REDIRECT EXAMINATION

3

BY MS. ROSENBERG:

4

Q. Officer Reffitt, when you testified in court last Friday -- don't quote me on that -- you didn't indicate that you were injured as a result of Mr. Davis, did you?

7

8

THE COURT: Just a second. Do you want to rephrase your question?

9

BY MS. ROSENBERG:

10

Q. What was your testimony regarding how you were injured?

11

A. I don't recall exactly what I said, but just said it was

12 during the confrontation.

13

Q. Did you indicate that Mr. Davis kicked you?

14

A. In my 128, yes.

15

Q. When you testified, is that what you indicated before you had time to reflect?

16

A. No. I said just with everything going on, that's why I put that, but...

17

Q. Is the U-128 form that you completed directly after the incident the only form that you indicated that information in?

21

A. Yes.

22

Q. And after subsequent any documents you completed, you have consistently indicated how your injury occurred?

24

A. Just with -- I mean, with workers' comp or which?

25

Q. With workers' comp in this courtroom.

1 A. That would be the only forms about it.

2 MS. ROSENBERG: Nothing further.

3 THE COURT: Do you have anything? I thought you were
4 conferring with --

5 MS. ROSENBERG: I'm done.

6 THE COURT: Do you have any recross?

7 MR. SIDOTI: Just one moment, please.

8 - - -

9 RECROSS-EXAMINATION

10 BY MR. SIDOTI:

11 Q. Your counsel asked you a question that but for your
12 U-128 form, you never told anyone or filled out any other forms
13 that said Mr. Davis kicked. You do you recall that question a
14 moment ago?

15 A. Yes.

16 Q. And you indicated you had not, correct?

17 A. Not that I'm aware of or recall.

18 MR. SIDOTI: Your Honor, may I approach the witness
19 for a moment?

20 THE COURT: Yes.

21 BY MR. SIDOTI:

22 Q. Sir, I'm going to show you what's been marked as
23 Plaintiff's Exhibit 161. That's the interdivisional report the
24 jury has heard about from the excessive force involving both
25 Van Dop and Sergeant Johnson. If you look at the bottom of

1 that page, please, regarding your interview.

2 A. Okay.

3 Q. Have you had the opportunity to review that document?

4 A. I have.

5 Q. What's the date up top, sir, that indicates the day that
6 you interviewed with Sergeant Van Dop?

7 A. September 13th.

8 Q. And how many days is this removed from the day you
9 filled out your document both for workers' comp and alleging
10 that Mr. Davis kicked you from the U-128 form?

11 A. Probably about ten.

12 Q. Ten or 12 days later, right?

13 A. Yes.

14 Q. What do you say to Officer Van Dop?

15 A. On the underlined part?

16 Q. Yes. Let me set this up, please, for a moment. You had
17 an audio -- you had a verbal conversation. You met with
18 Sergeant Van Dop to talk about your use of force in the
19 interaction regarding Mr. Davis; is that correct?

20 A. Yes.

21 Q. Both with Sergeant Van Dop and then a recorded statement
22 with Sergeant Johnson, correct?

23 A. Correct.

24 Q. Who is the IAB supervisor at that time, correct?

25 A. Correct.

1 Q. And at the bottom of this document in regards to Van
2 Dop's memo that gets exchanged throughout the department,
3 including potentially the chief of police, indicates he spoke
4 to you and that you told him that one of Mr. Davis's kicks
5 struck you in the knee. Is that what's reflected in Sergeant
6 Van Dop's report?

7 A. That's what it says.

8 Q. Twelve days later from when you said it was so chaotic
9 that you remember enough for your workers' comp but not 12 days
10 later with your supervising officer to tell him that it was not
11 a kick, that I may have slipped, correct?

12 A. Correct. It's in there.

13 MR. SIDOTI: I have nothing further.

14 THE COURT: I trust that you have nothing further,
15 Ms. Rosenberg, or do you?

16 MS. ROSENBERG: No, Your Honor.

17 THE COURT: Officer, you may step down, sir.

18 It's five minutes till five, ladies and gentlemen. I
19 don't believe we have any witnesses that we can get done in the
20 next five or ten minutes, and so we will be done for the day.
21 I think that we have -- before I excuse you, Counsel.

22 (Thereupon, Court and Counsel conferred out of the hearing
23 of open court and off the record.)

24 THE COURT: Ladies and gentlemen, I've spoken with
25 counsel. We believe that with the remaining -- with the number

1 of witnesses who remain, that number is five, that you should
2 get the case for your deliberations on Tuesday.

3 And I'm telling you that for planning purposes. There
4 is no circumstance, none, under which you will be either
5 hearing testimony -- I can't say there's no circumstance which
6 you will be deliberating on the 24th, but you certainly won't
7 be hearing testimony on the 24th. And the only way that you
8 will be deliberating on the 24th is that if you decide you want
9 to deliberate on the 24th. Otherwise, if we go to the 24th, we
10 will come back that Monday after Christmas.

11 So I don't want anybody to think, well, the last items
12 that I didn't get this weekend that I need to get on Christmas
13 Eve or preparing for family and friends to come over, I don't
14 want anybody to be distracted thinking on that because we're
15 not going to have you come in to continue to deliberate on the
16 24th unless you decide you want to do so. And certainly
17 there's no way we'll be taking any testimony on the 24th. I'm
18 pretty certain we'll be done by Tuesday.

19 So thank you very much, ladies and gentlemen, for your
20 patience. I know at times we were tested because at times mine
21 was tested. Have a good weekend. Have a good trip home. The
22 weather is kind of mild so you might have a chance to get
23 outside, get some fresh air. Be safe and be careful, and I
24 look forward to seeing everyone on Monday. Thank you.

25 (Jury out at 5:01 p.m.)

1 THE COURT: Ms. Noble, are there any other matters
2 that we need to take up from the defense this afternoon?

3 MS. NOBLE: Your Honor, defense would like to offer a
4 proffer regarding Baker and -- Officer Baker and Detective
5 Reffitt. I'm asking for permission to do that on Monday.

6 THE COURT: All right. That's fine.

7 MS. NOBLE: Thank you very much.

8 THE COURT: Is there anything else from the defense?

9 MS. NOBLE: That's everything, Your Honor. Thank you
10 very much.

11 THE COURT: Mr. Sidoti, anything from the plaintiff
12 before we break camp?

13 MR. SIDOTI: Judge, I was ordered to return to you the
14 unredacted document from Plaintiff's Exhibit 180, and I have
15 that for you.

16 THE COURT: All right. Thank you. You can give it to
17 Ms. Clark. Is there anything else?

18 The only other thing I would ask is that one
19 representative of the plaintiff, one of the defense, meet with
20 Ms. Clark now and make sure that we cover all of the exhibits
21 from today.

22 MS. PICKERILL: Yes, Your Honor.

23 THE COURT: If not, everybody, have a great weekend.
24 Be safe and take care. I look forward to seeing everybody
25 at 8:30 on Monday morning. Take care.

1 (Proceedings concluded at 5:03 p.m.)
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1 C E R T I F I C A T E
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3 I, Shawna J. Evans, do hereby certify that the
4 foregoing is a true and correct transcript of the proceedings,
5 including the testimony of LeVon Morefield and Robert Reffitt
6 only, before the Honorable Algenon L. Marbley, Judge, in the
7 United States District Court, Southern District of Ohio,
8 Eastern Division, on the date indicated, reported by me in
9 shorthand and transcribed by me or under my supervision.

10
11
12 s/Shawna J. Evans _____
13 Shawna J. Evans, RMR, CRR
14 Official Federal Court Reporter

15 January 16, 2022
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